This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

Stanford University Libraries
3 6105 128 545 105

KW.xx

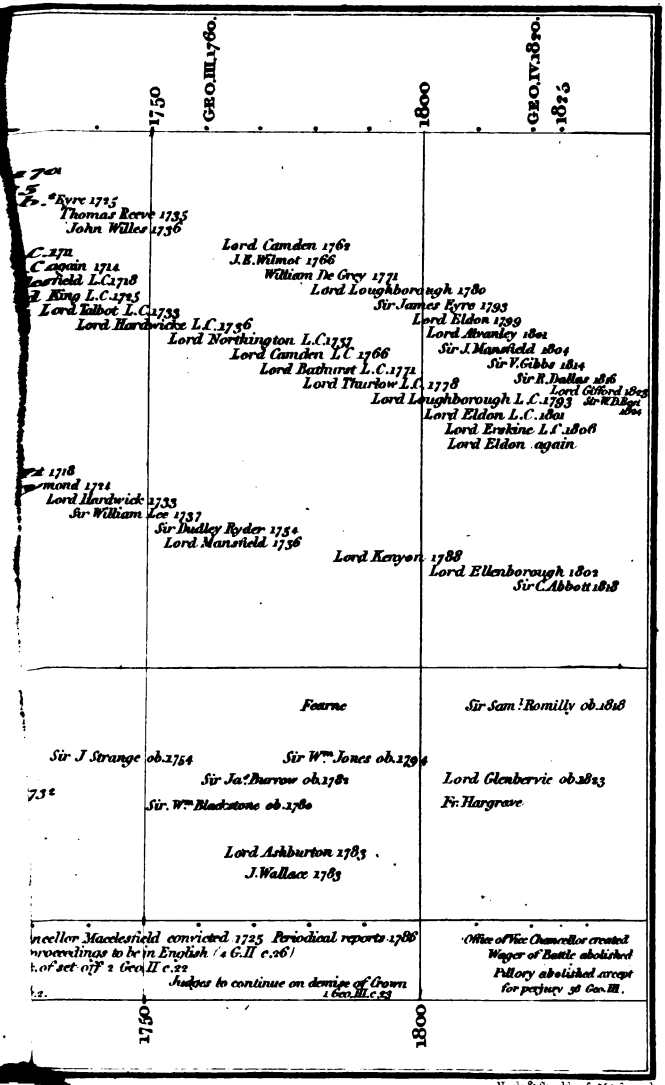
[?Roscoe (H. and T.)]

3rd ed 1st Ed

KW.xx

[?Roscoe (H. and T.)]

3 vols 1812



Neale & Stockley fe.31 Strand.

WESTMINSTER HALL:

OR

PROFESSIONAL RELICS

AND

ANECDOTES

OF THE BAR, BENCH, AND WOOLSACK.

VOL. 1.

(Rec'd, Hall & Th...)

Westminster Hall

Engd by

LONDON:
JOHN KNIGHT & HENRY LACEY,
PATERNOSTER ROW.
MDCCCXXV.

PREFACE.

A WORK of amusement, the subject matter of which is "Law and Lawyers," will, perhaps, be thought to require some explanation. The public are so much disposed to regard the study of the Law as a pursuit destitute of all attraction and interest, that the present attempt to glean from that ample field a few grains of amusement, will, probably, be looked upon with surprise. Those, however, who have rendered themselves acquainted with our Law Books, well know, that there exists in them a copious store of curious and interesting matter, which often enlivens those severer labours,

of which information, and not entertainment, is the object. Intimately connected as the Law is with various other branches of knowledge, blended as it must always be with the history of the country which it governs, and over the institutions and manners of which it must always exercise a powerful influence, it would, indeed, be singular, if the study of such a science were wholly barren of interest. With the view of collecting together these scattered curiosities of the Law Books, the present compilation has been undertaken.

There is also another class of books, to which frequent recourse has been had in the preparation of these volumes,—the various collections of Legal Biography and Anecdote. All these works have been diligently gleaned, and the most curious and important portions of their contents have been carefully selected. Some of the most valuable and entertaining pieces of biography

in our language are to be found amongst the Lives of our Lawyers. The Memoirs of the Lord Keeper Williams, and the Lord Keeper Guilford, are inimitable works. From those volumes, some rich and copious extracts will be found in the pages of the present publication.

With a view of conferring a somewhat higher character upon our work, than a mere compilation would be entitled to claim, some original papers, on subjects connected with the Law, have been scattered through the volumes. In these little dissertations, care has been taken to cite with accuracy the authorities referred to, in order that, whatever may be their intrinsic value, they may at all events be useful in directing the further enquiries of the reader.

Nor have the lighter anecdotes and *bon mots* which are current in the profession been neglected. The witticisms of our

Lawyers, with a few exceptions, are not, perhaps, very brilliant; but the best which could be collected are now presented to the public.

It is hoped that the following volumes will not only interest the Lawyer, but likewise the general reader. With the mere technicalities of professional learning they have no connexion, and they will, therefore, it is anticipated, be found both intelligible and acceptable even to those who are without the pale of the profession.

King's Bench Walk, Inner Temple,
January, 1825.

CONTENTS

OF

VOL. I.

	PAGE.
The Language of the Law	1
Sir Thomas More	26
The Good Judge	ib.
Mr. Bacon	31
Sir Edward Coke	32
Sir Nicholas Bacon	ib.
The Licensing of Law Books	33
Integrity of the Judges in Elizabeth's reign	36
The Blue Laws of Connecticut	38
Burke and Lord Thurlow	41
Lord Thurlow's Defence of himself in the House of Peers	42
Sir Edward Coke and the Case of Commendams	44
The Billingsgate of the Law	45
Legal Poets	48
The Lawyer's Farewel to his Muse	50
Candour of an Irish Deponent	54

PAGE.

Lord Coke and his Coachman 55
Burke's Opinion of Lawyers ... ... ib.
Perils of the Law in Ireland 57
Horne Tooke and the Bar 59
Quarrels between Coke and Bacon 60
The Chapter of the Double Mistress 63
Legal Vulgar Errors 64
The "Common Baylers" 68
Character of Saunders 70
Burning of the Temple in the Great Fire ... 75
Laws against Witches 77
Henry V. and the Chief Justice 90
Lord Keeper North and the Recorder of Colchester 94
The Crest of the Temple 97
Poetical Reports 99
An Agreeable Surprise 104
Mr. Butler's Advice on the Study of Real Property Law ... ... ib.
Character of Lord Keeper Guilford in early Life 107
Certainty to a certain Intent in every Particular 111
Ceremonies formerly observed on the Creation of a Judge 112
Eloquence of the early English Lawyers 114
Baxter and Jefferies 119
Singular Bill in Equity 124
Sumptuary Laws of the Temple respecting Dress 125
Sir Walter Raleigh and Sir Edward Coke 128
Mode of raising a Benevolence 133
Marriage of Lord Keeper Guilford 134
Sir Eardley Wilmot's Escape 143

PAGE.

The Estuis, or Bordelloes 145
Lord Kenyon's Criticism 148
Circumstantial Evidence,—Harris's Case 149
Outrageous Attack upon Lord Chancellor Clarendon 154
On the Use of Torture in Judicial Proceedings ... 160
The Temple Church 172
The late George Hardinge 177
Mr. Justice Catline 180
Deliberations of Juries ... . ib.
Bacon's Apothegms 189
Sir Matthew Hale 190
Mr. Howland 191
Legal Recollections of London ... ... ib.
Anecdote from Bacon's Apothegms 200
Lord Mansfield 201
Sir William Jones's first Speech in Court ... 204
Lord Kaimes 206
Lord Mansfield's Speech at the Time of Wilkes's Riots 207
Sir Nicholas Bacon 211
Laws against the Jews ... ... ib.
Sir Nicholas Bacon 215
Execution of Sir Thomas More 216
Lord Chancellor Cowper 220
Judicial Corruption 223
Sir John Davies and Dame Eleanor, his Wife ... 246
Identification of Stolen Goods 252
Opinion of a French Lawyer on an English Case 253
A Cross-Examination 255
Lord Chief Justice Willes 258

PAGE.

Lord Cowper and Richard Cromwell 259
Mr. Justice Burnet 261
Character of a Pettifogger 265
Coke's Address on being elected Speaker of the House of Commons 266
Lord Mansfield's Conduct during the Riots ... 268
Mr. Bacon 272
The Lawyer 273
Character of a Reverend Judge .. ... ib.
Lord Keeper North and the Rhinoceros 274
Trial and Execution of Lawrence, Earl Ferrers 276
Scriblerus's Reports 283

LAW AND LAWYERS.

THE LANGUAGE OF THE LAW.

NOTHING more singular can well be imagined than the language of our law in early times, when the English, the French, and the Latin were all employed. The proceedings in court (after the statute of Edward III.) were carried on in English, reported in French, and entered upon record in Latin. There is no doubt, that the French was introduced into our judicial proceedings by the Normans, on the conquest; and, indeed, William I. is said to have ordained, not only that the pleadings in all courts of justice should be in that language, but likewise that it should be taught at schools. In Chaucer's time, these schools appear to have been in full operation. Of the Prioress Eglantine, the poet says,

—— Frenche she spake full fayre and fetisly,
After the schole of Stratford atte Bowe,
For French of Paris was to hire unknowe.
Prologue, ver. 124.

Some curious information relative to the introduction and decline of the French language in England, may be found in the Preliminary Dissertation prefixed to Chaucer's Works.

The reason given by Fortescue (*De Laudibus*, *c.* 48.) for the introduction of the French language is as follows: "Likewise the Frenchmen, after their coming into England, reckoned not the accounts of their revenues but in their own language, lest they should be deceived therein, neither had they delight to hunt, and to exercise other sports and pastimes, and at dice-play and the hand-ball, but in their own proper tongue. Wherefore the Englishmen, by much using of their company, grew in such a perfectness of the same language, that at this day, in such plays and accounts, they use the French tongue. And they were wont to plead in French, until by force of a certain statute, that manner was much restrained. But it could never be wholly abolished, as well by reason of certain terms, which pleaders do more properly express in French than in English, as also, for that declarations upon original writs cannot be pronounced so agreeably to the nature of those writs as in French; and under the same speech the forms of such declarations are learned: moreover all pleas, arguments, and judgments, passed in the king's courts, and entered into books, for the instruction of them that shall come after, are evermore re-

ported in the French tongue. Many statutes also of that realm are written in French." The statute to which Fortescue alludes, is the 36 Edward III. which enacts, that all pleas, &c. shall be pleaded, shewn, defended, answered, debated, and judged in the English tongue, and entered and enrolled in Latin. "But though," as Dugdale observes, "the pleadings in French ceased with this statute, yet the terms of law in that language being accounted more significant than any other, were still retained."

It is said by Selden, that the statute of Edward III. took its rise from an inconvenience, rather supposed than felt; for though some kind of knowledge of law terms may be increased thereby, yet, unless the science is professionally studied, "it will breed nothing but notions and overwhelming conceits, which often engage men in law-suits to their great loss;" he adds, however, that, "thus in part, the reproach of Normandy rolled away, like that of the Israelites at Mount Gilgal." Mr. Barrington has remarked, that, with proper deference to such an authority, few law-suits have ever been occasioned by what he apprehends, and that it is not only a wise measure, for the reasons mentioned in the preamble,*

* The preamble runs as follows: "Because the Laws, Customs, and Statutes of this realm are not commonly

but that the legislature has carried the alteration still further, by directing, that the pleadings shall be enrolled in English. (*Barrington on the Ancient Statutes, p.* 291.)

The Reports of adjudged cases began, according to Sir Edward Coke, (*See Preface to* 3 *Report, p.* xxi.) to be written in *French*, in the reign of Edward III.; but it is observable, that in the Year Books, there are many reports of the time of Edward II. in French, while the fragments of cases of the reign of Edward I. are in Latin. It continued to be customary to report in French until the time of the Commonwealth, although an attempt was made by James I. to introduce the use of English. Wilson informs us, that James, in his speech from the throne to parliament, in the year 1609, recommended that the books of the common law should be written in the mother tongue, that the people might know what to obey, and that the lawyers in law, like the popish priests in the Gospel, might not keep the people in ignorance. (*Wilson's Life of James* I. *p.* 47.)

On the establishment of the Commonwealth, the deficiencies and corruptions of the law began to

---

known, and because they are pleaded, declared upon, and decided in the French Language, which is much unknown in this kingdom, so that parties to suits do not know what is said either for them or against them, by their Sergeants and Pleaders, &c."

be very nicely inquired into, and, amongst other questions of the same kind, we find it asked, "Why is the law kept in an unknown tongue?" (*See The Corruptions and Deficiency of the Laws of England soberly discovered. London,* 1649.) At last it was determined to abolish the use of the Law French altogether, and the following Ordinance was passed.

An Act for turning the Books of the Law, and all Processes and Proceedings in Courts of Justice, into English.

"The Parliament have thought fit to declare and enact, and be it declared and enacted, by this present Parliament, and by the authority of the same, that all the Report Books of the Resolutions of the Judges, and other books of the Law of England, shall be translated into the English Tongue: and that, from and after the 1st day of January, 1650, all Report Books of the Resolutions of Judges, and all other books of the Law of England, which shall be printed, shall be in the English Tongue only.

"And be it further enacted, by the authority aforesaid, that from and after the first Return of Easter Term, which shall be in the year 1651, all Writs, Process, and Returns thereof, and all Pleadings, Rules, Orders, Indictments, Injunctions, Certificates, and all Patents, Commissions, Records,

Judgments, Statutes, Recognizances, Rolls, Entries, and Proceedings of Courts Leet, Courts Baron, and Customary Courts, and all Proceedings whatsoever, in any Courts of Justice, within this Commonwealth, and which concern the Law and administration of Justice, shall be in the English Tongue only, and not in Latin or French, or any other language than English, any law, custom, or usage heretofore to the contrary notwithstanding, and that the same, and every of them, shall be written in an ordinary, usual, and legible hand and character, and not in any hand commonly called court-hand." (*Scobell's Collection, p.* 143.)

This ordinance does not appear to have given much satisfaction to the lawyers, who were, probably, chagrined at the idea of their clients being enabled to form an opinion upon the merits of their own cases. Stiles, the author of the Reports, thus alludes to the ordinance: "I have made these Reports speak English, not that I believe they will be thereby generally more useful, for I have been always, and yet am, of opinion, that that part of the common law which is in English hath only occasioned the making of unquiet spirits contentiously knowing, and more apt to offend others than to defend themselves; but I have done it in obedience to authority, and to stop the months of such of this English age, who, though they be as confusedly different in their minds and

judgments, as the builders of Babel were in their languages, yet do think it vain, if not impious, to speak or understand more than their own mother tongue." (*Preface to Stiles's Reports.*) Bulstrode also was compelled, much against his will, to translate his Reports into English. (*See the Address to the Reader prefixed to the 2d Part.*)

Upon the Restoration, the Law French was likewise restored as the language of the reporters, and continued in use until the beginning of the last century. In the Preface to Fortescue's Reports, (who was one of the Judges of the Common Pleas in the reign of George II.) there is a laboured attack upon the use of the Law French: "And here I cannot but observe," says he, "that while the Saxon is totally neglected, some, not content to learn the Law French for what is already wrote in, seem fond of the use of it, and of writing new things in it; but for what reason I am at a loss, and at a greater yet, why any lawyer should write reports in that tongue; * * *. If we consider the present state of Law French, as used by some modern reporters, wherein all the antiquated true French is lost, and instead thereof, English words substituted, with French terminations tacked to them, this still makes it worse, and thereby it is become even the corruption of an imperfect and barbarous speech, understood by no foreigner, not even by the French themselves, serving only as a mark of

our subjection to the Normans, and for the use of which the French despise us." Mr. Justice Fortescue attacked this antiquated absurdity with much greater effect in his celebrated and very humorous report of the trial of Stradling *v.* Stiles, usually printed in Pope's Works, at the end of the Memoirs of Martinus Scriblerus, and which will be found in another part of these volumes. At the conclusion of this case is an inimitable morsel of Law French, which it is impossible not to transcribe: *Le reste del argument jeo ne pouvois oyer car jeo fui disturbe en mon place.*

The Latin continued to be the language of the Records until the reign of George II., when a statute was passed directing them to be entered in English.

The motives of the lawyers in employing a dead or a foreign language for so long a period have been frequently questioned. It was objected, according to Sir John Davies, "to the professors of our law, that, forsooth, they write their Reports and books of the law in a strange unknown tongue, which no one can understand but themselves, to the end that the people, being kept in ignorance of the law, may the more admire their skill and knowledge, and value it at a higher price. As Cicero in his final book *de Oratore*, doth testify, that the like conceit was held of the first professors of the civil law, *Quia veteres illi*

qui huic scientiæ præfuerunt, obtinendæ atque augendæ potentiæ suæ causâ, pervulgari artem suam noluerunt. And Cæsar, speaking of the Druids, who were judges and interpreters of the laws among the ancient Britons, doth report of them, that though they spent twenty years in the study of those laws, *non existimabant fas esse ea literis mandare.*" (*Pref. to Sir John Davies's Rep.*)

With regard to the language of the statutes, it is observed by Barrington, (*p.* 426,) that the statutes of Edward the Fourth's reign are the last in the French Language: and again, (*p.* 431,) that the reign of Richard III. is a remarkable epoch in the legislative annals of the country, from the statutes having continued from this time to be in the English Language. This statement is certainly erroneous, for, in Pynson's Edition of the Statutes, those of Richard III. are all in French: and it is said by Sir John Davies, that "as for our statutes or acts of Parliament, the bills were for the most part exhibited in French, and passed and enrolled in the same language, even till the time of King Henry VII. And so they are printed in Rastell's first Abridgment of Statutes, published in the year 1559. But after the beginning of King Henry VII. his reign, we find all our acts of Parliament recorded in English." (*Preface to Reports.*) The reason given by Lord Coke for publishing the statutes in a foreign language, is

admirable: "It was not thought fit or convenient to publish those, or any of the statutes, enacted in those days, in the vulgar tongue, lest the unlearned, by bare reading, without right understanding, might suck out errors, and, trusting to their own conceit, might endanger themselves, and sometimes fall into destruction." (*Preface to* 3 *Report, p.* xxi.)

The French Language continued in use at court for a long period. Barrington mentions, that the letters from Burleigh and other Ministers to the English Ambassadors at foreign courts were in French, and that many instruments relating to English business are found in that language, during that and the following reign. Edward VI. as he also informs us, corresponded in French. Elizabeth, the daughter of James I., likewise corresponded with her father in that language. (*See Ellis's Original Letters, v.* iii. *p.* 112.)

PROJECTS TO REFORM THE LAW.

The necessity of adopting some plan for consolidating and simplifying the unwieldy and disjointed system of English Law, engaged the attention of several eminent men, at a period when the inconveniences of that system were trifling, compared with those which subsequent times have experienced. It is difficult to say at what precise time the evils of our complicated code first began to make themselves felt. During the reigns of

the Plantagenets and the Tudors, the system of the old law was only in progress, and it can scarcely be said that it was necessary to reform that which had not attained a perfect existence. The best developed, and most complete portion of our law at that time, was the feudal system, which harmonised with the spirit and intelligence of the age. Accordingly we find, that by far the majority of cases in the earlier Year Books, relate to questions arising out of the feudal contract, or to injuries committed to real property. But, from the commencement of the reign of Henry VIII. a most important change is observable in the Reports. England was becoming a commercial country, and personal property began to be more highly regarded. The reign of James I. may be called the *terminus* of the old law, and this, therefore, is, perhaps, the period at which the necessity of some great and radical change in our legal system began to be sensibly felt, although a proposal to that effect was made in the preceding reign. The spirit of the feudal times had become extinct, and an attempt, though an unsuccessful one, was made to abolish those military tenures, which were afterwards extinguished in the reign of Charles II. We can scarcely be allowed to call the improvements introduced into our judicature by Edward I. a reform of the law. They were rather a supplying what was deficient than

an amendment of what was superfluous. "The Laws," says Sir Matthew Hale, in speaking of this king's reign, "never did receive so sudden *an advancement*; nay, I think I may safely say, all the ages since his time have not done so much in reference to the orderly settling and establishing of the distributive justice of this kingdom, as he did within the short compass of the thirty-five years of his reign, especially about the first thirteen thereof." (*History of the Common Law, p.* 159.) "He bent himself," says Sir Francis Bacon, speaking of the same prince, "to endow his state with sundry notable and fundamental laws, upon which the government thereof hath ever since principally rested."

Towards the conclusion of Elizabeth's reign, a formal proposal was made to remodel the law. "I am," says Bacon, in the Preface to his Rules and Maxims of the Common Law, "an unworthy witness to your Majesty, of a higher intention and project, both by that which was published by your Chancellor in full parliament from your royal mouth, in the year 35 of your happy reign, and much more by that which I have been since vouchsafed to understand from your Majesty, imparting a purpose for these many years infused into your Majesty's breast, to enter into a general amendment of the state of your laws, and to reduce them to more brevity and certainty, that the great

hollowness and unsafety in assurances of lands and goods may be strengthened, the penalties that lie upon many subjects removed, the execution of many profitable laws revived, the judge better directed in his sentence, the counsellor better warranted in his counsel, the student eased in his reading, the contentious suitor, that seeketh but vexation, disarmed, and the honest suitor, that seeketh but to obtain his right, relieved; which purpose and intention, as it did strike me with great admiration when I heard it, so it might be acknowledged to be one of the most chosen works, and of the highest merit and beneficence towards the subject, that ever entered into the mind of any king; greater than we can imagine, because the imperfections and dangers of the laws, are covered under the clemency and excellent temper of your Majesty's government."

The zeal with which Bacon turned the powers of his stupendous mind to the consideration of this subject, might, under happier auspices, have had the most beneficial results. His first proposal "for amending the laws of England," was made while he was Attorney General to James I. "After I had thought of many things," he observes, "I could find, in my judgment, none more proper for your Majesty as a master, nor for me as a workman, than the reducing and recompiling of the Laws of England." Sir Francis then pro-

ceeds to point out the principal inconveniences which resulted from the then state of the law, in consequence of the changes which had been gradually taking place. The great work of reformation was to be accomplished by a digest, or recompiling, first, of the Common Law, and second, of the Statute Law.

"For the first of these, three things are to be done:

"1. The compiling of a book *de antiquitatibus Juris.*

"2. The reducing or perfecting of the course or *corps* of the Common Laws.

"3. The composing of certain introductive and auxiliary books, touching the study of the Laws."

With regard to the Statute Law, he proposes,

"1. To omit from the Digest all statutes expired or repealed.

"2. To repeal all statutes which are sleeping, and not of use.

"3. To mitigate the penalties of certain statutes, and

4. To reduce "the concurrent statutes, heaped upon one another, to one clear and uniform law." "Towards this," he observes, "there hath been already, upon my motion and your Majesty's direction, a great deal of good pains taken; my Lord Hobart, myself, Sergeant Finch, Mr. Heneage Finch, Mr. J. Noy, Mr. Hackwell, and

others, whose labours being of a great bulk it is not fit now to trouble your Majesty with any further particularity therein; only by this you may perceive the task is already advanced." He then proposes the appointment of a commission, named by both Houses of Parliament, "to accomplish this excellent work." It does not appear to what cause the failure of this important project, in which so considerable a progress appears to have been made, is to be attributed. The attention of Bacon was probably diverted to other objects; but at a later period, after his conviction and disgrace, he again applied his mind to the same subject; and made to James "an offer of a digest of the laws of England." The conclusion of this little tract contains a fine allusion to the writer's situation. "As for myself, the law was my profession, to which I am a debtor; some little helps I have of other arts, which may give form to matter, and I have now (by God's merciful chastisement and by his special providence) time and leisure to put my talent or half talent, or what it is, to such exchanges as may perhaps exceed the interest of an active life. Therefore, as in the beginning of my troubles, I made offer to your Majesty to take pains in the story of England, and in compiling a method and digest of your laws, so have I performed the first, which rested but upon myself in some part, and I do in all

humbleness renew the offer of this latter, which will require help and assistance to your Majesty, if it shall stand with your good pleasure to employ my service therein." It does not appear that the King took any effectual steps to promote the object which Bacon had so greatly at heart.

The object of this intended reform is nowhere better described than by Sir Edward Coke, in the Preface to his 4 Rep. "To make one plain and perspicuous law divided into articles, so as every subject may know what acts be in force and what repealed, either by particular or general words, in part or in the whole, or what branches and parts abridged, what enlarged, what expounded; so that each man may clearly know what and how much of them is in force, and how to obey them, it were a necessary work, and worthy of singular commendation; which his Majesty, out of his great wisdom and care to the commonwealth, hath commanded to be done; for as they now stand, it will require great pains in reading over all, great attention in observing, and greater judgment in discerning, upon consideration of the whole, what the law is in any one particular point."

It may be conjectured that the House of Commons, in the reign of James I. was anxious to effect a reform in the law, for we find that when a proposal was made that the King should give up the Court of Wards, and receive, instead of its

perquisites, 200,000*l.* per annum, it was resolved, That his Majesty be petitioned to appoint some to make a diligent survey of all the penal laws of this realm, to the end that such of them as are obsolete and unprofitable may be repealed, and that for the better ease and certainty of the subject, all such as are profitable concerning one matter may be reduced into one Statute.—(*Journal of the House of Lords, July* 23, 1610.)

During the commonwealth, there existed a strong public feeling with regard to the amendment of the laws. It was, in fact, a favourable opportunity, (though little improved) for making an attempt at reformation. The attention of the public was turned to the subject by the Pamphleteers of the day, who wrote with violence against the abuses of the law. In a short tract by John Warr, (London, printed for Giles Calvert, 1649,) entitled, "*The Corruption and Deficiency of the Laws of England soberly discovered,*" the popular view taken of the subject may be traced. The principal objections to our legal system are pointed out, and commented upon with considerable acrimony. "Why," it is asked, "are there so many turnings, windings, and delays in the laws of England? Why is our law a meander of intricacies, where a man must have contrary winds before he can arrive at his desired port? Why are so many men destroyed for want of a

formality and punctilio in law? and who would not blush to behold seemingly grave and learned sages to prefer a letter, syllable, or word, before the weight and merit of a cause? Why does the issue of most law-suits depend upon the precedents rather than the rule, especially the rule of reason? Why are persons' lives forfeited by the law upon light and trivial grounds? Why do some laws exceed the offence? and on the contrary, other offences are of greater demerit than the penalty of the law? Why is the law kept in an unknown tongue, and the nicety of it rather countenanced than corrected? Why are not Courts rejourned into every county, that the people may have right at their own doors, and such tedious journeyings may be prevented?" It is very evident from these questions, and also from the next chapter of the tract, entitled, "Of the corrupt Interests of Lawyers in the Commonwealth of England," that the writer did not belong to that learned body. It appears that the military at this period threatened to reform our Courts of Justice. "The soldiers," says Howell, "have a great spleen to the lawyers, insomuch that they threaten to hang up their gowns among the Scots' colours in Westminster Hall, *but their chiefest aim is at the regulation of the Chancery*, for they would have the same tribunal to have the power of *Justice* and *Equity*, as the same apothecary's

shop can afford us purges and cordials."—(*Familiar Letters, v.* iv. *l.* 38.) Reformers of this kind were much dreaded by Sir Matthew Hale, who has observed, that "twelve red-coats in Westminster Hall were able to do more mischief to the nation than as many thousand in the field." That many strenuous attempts were made during the Commonwealth to effect a complete change in the system of our jurisprudence, may be gathered from Sir Matthew Hale's Considerations touching the Amendment of Laws,—"In the late troubles there was very great earnestness, by those who had gotten the power in their hands, for the reformation of things amiss in the law. And I do verily believe that any thing might have been passed in that kind, that prudent and knowing men would have offered. Nay, possibly there was scarce any thing that could have been offered, introductory of any alteration, but would have been greedily swallowed." The chief motive of those who were thus anxious to produce a change in the laws, is thought by Hale to have been a desire thereby to obstruct the King's return, "for upon a sudden all men's properties, estates, and assurances, would have much rested upon such new laws, and have engaged the community, upon account of their common interest, to have supported that power which introduced those laws wherein they were so much concerned." Upon this account he tells us

that the wise and honest men of that day declined forwarding a measure unsuited to the unstable times in which it was proposed: "And therefore, those who were solicited to undertake that business, rather chose to propound such things only to be done as might be done by the power of Courts of Justice, but declined whatsoever required a new law to authenticate it."

Several alterations were made during the Commonwealth, with regard to the administration of the laws. Thus, in the year 1649, an ordinance was passed "for redress of delays and mischiefs arising by writs of error in several cases;" and it was enacted that no execution should be stayed or superseded in any Court of record by any writ of error, after verdict and judgment obtained; and that no judgment should be arrested for want of matter of form."—(*Scobell's Collections of Acts, p.* 72.) In 1650, an ordinance was passed for introducing the English language into all legal proceedings and reports.—(*See Ante, p.* 5.) By an ordinance of the same year, adultery was declared a felony without benefit of clergy, and fornication was made punishable with three months' imprisonment.—(*Scobell, p.* 97.) An insolvent act was also passed in the year 1649, for the relief of all prisoners who should swear that they were not worth 5l. beyond their wearing apparel, &c. but their goods and chattels were to remain

liable. (*Scobell, p.* 28.) This appears to be the earliest insolvent act. Another act to the same purpose was passed in the same year. (*Id. p.* 213.)

On the Restoration, this important subject occupied the attention of Sir Matthew Hale, who has made some very excellent observations upon it, in a tract, entitled, "Considerations touching the Amendment of the Laws;" (printed in Mr. Hargrave's Law Tracts.) The temperate wisdom displayed in these remarks, and the candour with which they are written, are well worthy the observation of our modern legislators. After pointing out the great difficulties in which the subject is involved, and the caution and discretion required in attempting a reformation in the law, Hale proceeds to shew the necessity of such a reformation. "We must remember, that laws were not made for their own sakes, but for the sake of those who are to be guided by them, and though it is true that they are, and ought to be, sacred, yet if they be, or are become unuseful for their end, they must either be amended, if it may be, or new laws be substituted, or the old repealed, so it be done regularly, deliberately, and so far forth as the exigency, or convenience, justly demands it; and in this respect the saying is true, *salus populi lex esto* * * *. The stream of things has, as it were, left that channel, and he that thinks a state can be exactly steered by the same

laws in every kind, as it was two or three hundred years since, may as well imagine, that the clothes that fitted him when he was a child, shall serve him when he is grown a man. The matter changeth the custom; the contracts, the commerce; the dispositions, educations, and tempers of men and societies, change in a long tract of time; and so must their laws in some measure be changed, or they will not be useful for their state and condition. And besides all this, as I before said, time is the wisest thing under heaven. These very laws, which at first seemed the wisest constitution under heaven, have some flaws and defects discovered in them by time. As manufactures, mercantile arts, architecture, and building, and philosophy itself, receive new advantages and discoveries by time and experience, so much more do laws, which concern the manners and customs of men."

How different are the views of Sir Matthew Hale from those of some of our modern lawyers, who see nothing but danger in departing from the path marked out for us by "the wisdom of our ancestors." The reluctance of the lawyers to take part in any scheme calculated to alter and improve the system of our jurisprudence, has too often thrown the task into hands not altogether fitted for the conduct of it; an evil which is remarked by Sir Matthew Hale. "The amendment

of things amiss, timely, by knowing, able, and judicious men, that understand their business, may do very much good, and prevent very much evil that may otherwise ensue: and when the business is begun by such hands, it may possibly be too late to allay it. And although it may be true, that as the legislative power is established there be many reserves to prevent or stop such an inundation, yet we know not how high the public necessities of supplies may arise, considering our many great undertakings in the kingdom; and it is no new thing to observe very hard and unreasonable terms granted as the price and purchase of supplies, when they cannot be had upon easier terms. *And it will have this plausible pretence, that the judges and lawyers will do nothing to the laws, and therefore it shall be done by other hands.* Such a humour would be more easily prevented by a wise and reasonable undertaking in this kind, which would not be so easily diverted or allayed, if once it should be flying." Hale considered the period at which he was writing well adapted for attempting the reformation which he had in view. "But now things are settled upon their right basis, and the Parliament returned to its original constitution, the season, for aught I know, may be well enough for such an enterprise."

In attempting to carry his projects into effect, Sir Matthew Hale had, doubtless, a struggle with

the bigotted lawyers of his day, who discovered in every change a destructive innovation. Thus the abolition of the military tenures, a measure which had been long called for by the alterations in the state of society, was strongly disapproved of by Sir Francis North. "He thought," says his brother, "the taking away of the tenures *a desperate wound to the liberties of the people of England*, and must, by easy consequence, procure the establishment of an army."

In the reign of Queen Anne, the subject of amending the law attracted the attention of Burnet, amongst others, who, in the History of his own Times, has thus alluded to it: "There are two things of a public nature, which deserve the care of a Parliament; the one must begin in the House of Lords, and the other in the House of Commons. The Law of England *is the greatest grievance of the nation*, very expensive and dilatory. There is no end of suits, especially when they are brought into Chancery. It is a matter of deep study to be exact in the law; great advantages are taken upon inconsiderable errors; and there are loud complaints of that which seems to be the chief security of property, I mean juries, which are said to be much practised upon. If a happy peace gives us quiet to look to our own affairs, there cannot be a worthier design undertaken, than to reduce the law into method, to di-

gest it into a body, and to regulate the Chancery, so as to cut off the tediousness of suits, *and, in a word, to compile one entire system of our laws.* The work cannot be undertaken, much less finished, but by so great authority, as at least an address from the House of Lords to the Queen.

"Nothing, after the war is happily ended, can raise the glory of her reign more than to see so noble a design set on foot in her time. This would make her name sacred to posterity, which would sensibly feel all the taxes they have raised fully repaid them, if the law were made shorter, clearer, more certain, and of less expense." (*Burnet, vol.* iv. *p.* 445.)

We are told by Barrington, (*Observations on the Ancient Statutes, p.* 563,) that towards the middle of the last century, Sir William Young moved for a Committee of the House of Commons, for the purpose of revising the Criminal Law, and was himself appointed chairman; but that nothing material was either done or resolved upon.

At length a select committee has been appointed, "to consider the expediency of consolidating and amending the Criminal Law of England," and no rational doubt can be entertained of their reporting in favour of such a measure. In what manner the reform is to be effected is a most important and difficult question. Lord Ba-

con recommends the appointment of commissioners, to be nominated by both Houses of Parliament. Sir Matthew Hale is of opinion, that the bills should be prepared by the Judges and other "Sages," who should be examined respecting them before the Committees of both Houses: and a third mode is proposed by Mr. Daines Barrington. (*Ancient Statutes, p.* 563.) The success of the attempt will greatly depend upon the character of the parties who are entrusted with the execution of it; and it is to be hoped, that Parliament will display the greatest prudence in the selection of them.

"Sir Thomas More, on the day that he was beheaded, had a barber sent to him, because his hair was long, which was thought would make him more commiserated by the people. The barber came to him, and asked him, 'whether he would please to be trimmed?' 'In good faith, honest fellow,' saith Sir Thomas, 'the king and I have a suit for my head; and till the title be cleared, I will do no cost upon it.'" (*Bacon's Apothegms.*)

THE GOOD JUDGE.

"The good advocate, whom we formerly described, is since, by his prince's favour, and his

own deserts, advanced to be a judge, which his place he freely obtained, with Sir Augustine Nicolls, whom King James used to call, 'the Judge that would give no money; otherwise, they that buy justice by wholesale, to make themselves savers must sell it by retail.'

"He is patient and attentive in hearing the pleadings on both sides, and hearkens to the witnesses, though tedious. He may give a waking testimony, who hath but a dreaming utterance; and many country people must be impertinent, before they are pertinent, and cannot give evidence about a hen, but first they must begin with it in the egge. All which our judge is contented to hearken to.

"He meets not a testimony half way, but stayes till it come at him. He that proceeds on half evidence, will not do quarter justice. Our judge will not go till he is led. If any shall brow-beat a pregnant witnesse, on purpose to make *his* proof miscarry, he checketh them, and helps the witnesse that labours in his delivery. On the other side, he nips those lawyers, who, under a pretence of kindnesse to lend a witnesse some wordes, give him new matter, yet clean contrary to what he intended.

"Having heard with patience, he gives sentence with upwritenesse. For when he put on his robes, he put off his relation to any; and, like

Melchisedech, becomes without pedigree. His private affections are swallowed up in the common cause, as rivers lose their names in the ocean. He, therefore, allows no noted favourites, which cannot but cause multiplication of fees, and suspicion of by-wayes.

"He silences that lawyer who seeks to set the neck of a bad cause, once broken, with a definitive sentence, and causeth that contentious suits be spued out, as the surfets of Courts.

"He so hates bribes, that he is jealous to receive any kindnesses above the ordinary proportion of friendship, lest, like the sermons of wandering preachers, they should end in begging. And surely integrity is the proper portion of a judge. Men have a touch-stone whereby to try gold, but gold is the touch-stone whereby to trie men. It was a shrewd gird which Catulus gave the Roman Judges for acquitting Clodius, a great malefactor, when he met them going home well attended with officers: 'You do well (quoth he) to be well guarded for your safety, lest the money be taken away from you, you took for bribes.' Our judge also detesteth the trick of mendicant Friars, who will touch no money themselves, but have a boy with a bag to receive it for them. When he sits upon life, in judgment he remembreth mercy. Then, (they say) a butcher may not be of the jurie; much lesse let him be a judge. Oh,

let him take heed how he strikes, that hath a dead hand. It was the charge Queen Marie gave to judge Morgan, Chief Justice of the Common Pleas, that notwithstanding the old errour amongst judges did not admit any witnesse to speake, or any other matter to be heard in favour of the adversary, her Majesty being party; yet her Highnesse' pleasure was, that whatsoever could be brought in the favour of the subject should be admitted and heard. If the cause be difficult, his diligence is the greater to sift it out. For though there be mention, (Psalm xxxvii. 6.) of righteousness as cleare as the noon day, yet God forbid that innocency, which is no clearer than twilight, should be condemned. And seeing one's oath commands another's life, he searcheth whether malice did not command that oath: yet when all is done, the judge may be deceived by false evidence. But blame not the hand of the diall, if it points at a false howre, when the fault's in the wheels of the clock which direct it, and are out of frame.

"The sentence of condemnation he pronounceth with all gravity. 'Tis best when steeped in the judge's tears. He avoideth all jesting on men in misery: easily may he put them out of countenance, whom he hath power to put out of life. Such as are unworthy to live, and yet unfitted to die, he provides shall be instructed. By God's mercy, and good teaching, the reprieve of their

bodies may get the pardon of their souls, and one day's longer life for them here may procure a blessed eternity for them hereafter, as may appear by this memorable example. It happened about the year 1556, in the town of Weissenstein, in Germany, that a Jew, for theft he had committed, was in this cruel manner to be executed: He was hanged by the feet, with his head downwards betwixt two dogs, which constantly snatched and bit at him. The strangenesse of the torment moved Jacobus Andreas (a grave, moderate, and learned Divine, as any in that age) to go to behold it. Coming thither, he found the poore wretch, as he hung, repeating verses out of the Hebrew psalms, wherein he cried out to God for mercy. Andreas, hereupon, took occasion to counsell, to trust in Jesus Christ, the true Saviour of mankind. The Jew, embracing the Christian faith, requested but this one thing, that he might be taken down and be baptised, though presently after, he were hanged again, (but by the neck, as Christian malefactors suffered) which was accordingly granted him.

"He is exact to do justice in civill suits betwixt sovereigne and subject. This will most ingratiate him with his Prince at last. Kings neither are, can, nor should be, lawyers themselves, by reason of higher state employments, but herein they see with the eyes of their judges, and at last

will break those spectacles which, (in point of law,) shall be found to have deceived them.

"He counts the rules of state and the laws of the realm mutually support each other. Those who made the laws to be not onely disparate, but even opposite terms to maximes of government, were true friends neither to laws nor government. Indeed, *Salus Reip.* is *charta maxima:* extremity makes the next the best remedy. Yet though hot waters be good to be given to one in a swound, they will burn his heart out who drinks them constantly when in health. Extraordinary courses are not ordinarily to be used, but when enforced by absolute necessity.

"And thus we leave our good judge to receive a just reward of his integrity, from the Judge of Judges, at the last assize of the world." (*Fuller's Holy State, p.* 270.)

"Mr. Bacon, after he had been vehement in parliament against depopulation and inclosures, and that soon after the queen told him, that she had referred the hearing of Mr. Mill's cause to certain counsellors and judges; and asked him how he liked it? answered, 'Oh, Madam, my mind is known; I am against all inclosures, and especially against inclosed justice.'" (*Bacon's Apothegms.*)

"Sir Edward Coke being vehement against the two Provincial Councils of Wales, and the North, said to the King, 'There was nothing there but a kind of confusion and hotch-potch of justice: one while they were in a Star-chamber; another while a King's Bench; another, a Common Pleas; another, a Commission of Oyer and Terminer.' His Majesty answered, 'Why, Sir Edward Coke, they be like houses in progress, where I have not, nor can have, such distinct rooms of state, as I have here, at Whitehall, or at Hampton Court.'" (*Bacon's Apothegms. See "The Case of the Lords Presidents of Wales and York."* 12 *Report*, 50.)

"When Sir Nicholas Bacon, the Lord Keeper, lived, every room in Gorhambury was served with a pipe of water, from the ponds distant about a mile off. In the life-time of Mr. Anthony Bacon, the water ceased; after whose death, his Lordship, coming to the inheritance, could not recover the water without infinite charge. When he was Lord Chancellor, he built Verulam-house, close by the pond-yard, for a place of privacy when he was called upon to dispatch any urgent business. And being asked, why he built that house there? his Lordship answered, 'That since he could not carry the water to his house, he would carry his house to the water.'" (*Bacon's Apothegms.*)

THE LICENSING OF LAW BOOKS.

THE practice of referring all law books to the chancellor and judges for a license was a consequence of the Licensing Acts; but continued to exist long after those acts had expired, in the reign of William III. In James II.'s time, an order was issued to the Stationers' Company, "That all books of and concerning the common laws of the realm are to be licensed by the lord chancellor, the lord keeper of the great seal of England, the lords chief-justices, chief-baron, or one or more of them, or by their or one or more of their appointments." Even at the time when the illegal patent for the printing of all law books was in existence, the patentees could not print law books without the judges' license. (*Cart. Rep.* 89.) The disadvantages of this law-patent are pointed out by Mr. Viner, in Abridgment, (*vol.* 17, *p.* 209.) "These books," says he, "are never perused by the learned before they are put to the press; and if *the Maxims of Tom Thumb* or *Dr. Doolittle* came to their press under the title of law, I dare undertake the patentees would make no scruple of printing them as such." The rule with regard to licensing law books formerly was, "that no book could be cited in court which had not been licensed by the judges." "Mr. Carthew cited a case in 2 *Mod.* 97, to the contrary

To which Holt, chief-justice, *in ird*, said, that no books ought to be cited at the bar but those which were licensed by the judges." (1 *Ld. Raym.* 537.) One of the earliest reporters who ventured to break through this custom was Tracy Atkyns, who published Reports *tempore* Lord Hardwicke, which, although not licensed by the judges, were cited by Lord Mansfield. (*See* 1 *Black. Rep.* 653, *and the Preface to Atkyns' Rep.*) Mr. Justice Foster also published his Reports without obtaining the sanction of the judges; an example which was soon afterwards followed by Sir James Burrow, who has stated his reasons for so doing in his Preface. "Licenses by the chancellor and the judges," he observes, "proceed upon the character of the reporter only, without saying a word of the work itself, or that the licensess ever saw it. Such licenses (to allow and approve of the printing and publishing) took their rise from the necessity of a license to print, as the law formerly stood, and have continued in the same form of words (without any meaning) since the reason of them has ceased." It appears that the judges themselves were anxious to abolish this unmeaning ceremony. "I have been assured," says Sir James Burrow, in the same preface, "that some now possessed of judicial offices have declared, that they never would sign one, because it hangs out false colours, and misleads those who think

it gives the least approbation or authority to the work." "The same form of license and testimonial," says Mr. Douglas, "continued in use till not many years ago, when, as the one had become unnecessary, and the other was only a general commendation of the writer, and no voucher for the merit of the work, the judges, I believe, came to a resolution not to grant them any longer, and accordingly the more recent reports have appeared without them." (*Pref. to Dougl. Rep.* iii. *and see his Introduction to Election Cases, p.* 37.)

It appears to have been formerly usual for the writer of a law book to present a copy to each of the judges, a custom which the editor of Sir William Blackstone's Reports is blamed for having omitted. (*See the Character of Sir W. Blackstone, p.* 100.) Sir James Burrow makes a formal excuse for his omission of the practice of presenting copies to his friends. "I hope likewise for another favour from all who have honoured me with their acquaintance, which is, that they will be so good as to excuse my not sending them books; such a number have a right to expect presents, if I make any, that I have been advised to make none; it is not just that I should lose by the pains I have taken for the service of the profession; I am not solicitous to gain."

INTEGRITY OF THE JUDGES IN ELIZABETH'S REIGN.

"It is very observable," says Lord Clarendon, in speaking of the opinions of the judges relative to ship-money, "that in times when the prerogative went highest, never any court of law, very seldom any judge, or lawyer of reputation, was called upon to assist in any act of power." The consequence of this forbearance was, that the judges, in the earlier periods of our history, seldom interfered in political matters, and it was not until the reign of James I. that the system of rendering the bench subservient to the politics of the court was introduced. There is an instance, indeed, of an attempt made by Elizabeth to overawe the judges, who had the firmness to offer a successful resistance to the commands of their imperious mistress. Having created a new office in the Common Pleas, she bestowed it upon Richard Cavendish, one of her servants, and commanded the judges to admit him. This they delayed to do, alleging, that the prothonotaries claimed a right to perform the duties of the office. Upon this, her Majesty dispatched a severe letter to them, commanding them to shew the reasons of their contempt and disobedience, to the Lord Keeper and the Earl of Leicester. Which the judges did, alleging the grounds above mentioned. Not contented with this, the queen sent a peremp-

tory message to admit Cavendish, adding, that if the others were put out, they were rich and able men, and that her courts of justice were open, where they might demand their rights,—that this was not to take away their right, but to put them to their action.' The judges humbly answered, That the queen had taken her oath for the execution of justice according to law,—that they did not doubt but that when her majesty was informed that it was against law, she would do what befitted her; for their parts, they had taken an oath to God, to her, and the commonwealth, and if they should do it without process of law before them, and upon her command put the others out of possession, though the right remained to them, it were a breach of their oaths, and, therefore, if the fear of God were not sufficient, they told her, that the punishment that was inflicted upon their predecessors for breach of their oaths, (citing the case of Thorpe in Richard II.'s time,) might be sufficient warning to them. The queen, upon hearing the reasons, was satisfied, and her judges heard no more of the business.' (*See* 1 *And. Rep.* 152, *and* 3 *How. State-Trials*, 128.) In the succeeding reign, all the judges, with the exception of Sir Edward Coke, displayed a most pusillanimous spirit upon an occasion similar to the present, an account of which may be found in another part of these volumes.

THE BLUE LAWS OF CONNECTICUT.

Many very curious documents are preserved amongst the archives of the towns in the United States, which were the seats of the early settlers from this country. The peculiar opinions which these people, who were often very strict puritans, carried with them to their new abodes, are visible in the strange laws which they enacted, and in the reports of their judicial proceedings, still in existence. The code of 1650, being a compilation of the earliest laws and orders of the General Court of Connecticut, with some extracts from the laws and judicial proceedings of Newhaven Colony, commonly called Blue Law, was lately published, in a small volume, at Hartford, U. S. from which the following cases are extracted. The puritanical strictness of some of these decisions is highly amusing.

"*A Court holden July* 1, 1640.

"Thomas Parsons and John ———, servants to Elias Parkmore, were whipped for their sinful dalliance and folly with Lydia Browne.

"John Lobell, the miller, was whipped for sinful dalliance with a little wench of Goodman Hall's.

"Goodman Hunt and wife, for keeping the

councils of the said William Hardinge, baking him a pastry and plum-cakes, and keeping company with him on the Lord's day, and she suffering Hardinge to kiss her, they being only admitted to sojourn in this plantation on their good behaviour, were ordered to be sent out of this town, within one month from the date hereof; yea, in a shorter time if any miscarriage be found in them.

"Edmund Dorman, plaintiff, entered an action of slander or defamation against Jeremiah Johnson, defendant. The plaintiff informed against him, that he had heard that J. Johnson had reported at John Olvarde's house, that he heard Dorman at prayer in a swamp, for a wife, and there were other circumstances of scoffing, &c.

"The defendant was asked, whether he granted the thing, or denied. The defendant desired proof, and that the witnesses might speak apart; John Olvarde was first called, who testified, that Johnson being at his house, he heard him say that he heard Edmund Dorman at prayer in a swamp, (by John Downes's,) for a wife, and said, 'Lord, thou knowest my necessity, and canst supply it; Lord, bend and bow her will and make her sensible of my condition or necessity.'

"Stephen Bradley being called, also testified the same thing. The defendant being asked what he had got to say for himself, said he thought

Bradley did it out of revenge; but he was told he must prove him a false person upon record, or perjured, or that he doth it out of revenge at this time. The defendant further said, that he did expect some other persons that were present at John Olvarde's, would have been here, therefore did refuse to make his defence further at this time, and desired that the witnesses might not be sworn.

"Then Jeremiah was told, that it is a fearful thing to come to that height of sin as to sit in the seat of the scorner. Therefore the Court told him they should defer this business, and warned him to attend the next particular court to answer thereto."

In an American paper, a copy is given of some of the early Blue Laws of Connecticut, many of which, especially upon points of religion, are of a most singular character. Thus:—

"No one shall run of a sabbath day, or walk in his garden or elsewhere, except reverently to and from church.

"No one shall travel, cook victuals, make beds, sweep houses, cut hair, or shave, on the sabbath day.

"No woman shall kiss her child on sabbath or fasting days.

"No one shall read common prayer, keep Christmas or saint's day, make minced pies, dance,

play cards, or play on any instrument of music, except the drum, the trumpet, and the jew's-harp.

"No one shall court a maid without first obtaining the consent of her parents; five pounds penalty for the first offence, ten for the second, and for the third, imprisonment during the pleasure of the court.

"Every male shall have his hair cut round according to a cap."

BURKE AND LORD THURLOW.

During the discussions on the regency question, in 1788, Lord Thurlow is said to have trimmed between the contending parties with considerable skill. In alluding to the King's afflicting illness, his Lordship employed some very pathetic expressions in the House of Peers, which occasioned the following sarcastic observations from Burke.—"The theatrical tears then shed were not the tears of patriots for dying laws, but of lords for their expiring places; the iron tears which flowed down Pluto's cheek rather resembled the dismal bubbling of the *Styx*, than the gentle murmuring streams of Aganippe; in fact, they were tears for his majesty's bread, and those who shed them would stick by the King's loaf, as long as a single cut of it remained, while even a crust of it held together." *(Prior's Life of Burke, p. 334.)*

LORD THURLOW'S DEFENCE OF HIMSELF IN THE HOUSE OF PEERS.

"At times, *Lord Thurlow* was superlatively great. It was the good fortune of the Reminiscent, to hear his celebrated reply to the Duke of Grafton, during the inquiry into Lord Sandwich's administration of Greenwich hospital. His Grace's action and delivery, when he addressed the house, were singularly dignified and graceful; but his matter was not equal to his manner. He reproached Lord Thurlow with his plebeian extraction, and his recent admission into the peerage; particular circumstances caused Lord Thurlow's reply to make a deep impression on the Reminiscent. His Lordship had spoken too often, and began to be heard with a civil but visible impatience; under these circumstances he was attacked in the manner we have mentioned. He rose from the woolsack, and advanced slowly to the place from which the chancellor generally addresses the house; then, fixing on the duke the look of Jove, when he grasps the thunder:—"I am amazed," he said, in a level tone of voice, "at the attack which the noble duke has made on me. Yes, my Lords," considerably raising his voice, "I am amazed at his grace's speech. The noble duke cannot look before him, behind him, or on either side of him, without seeing some

noble peer who owes his seat in this house to his successful exertions in the profession to which I belong. Does he not feel that it is as honourable to owe it to these, as to being the accident of an accident?—To all these noble Lords the language of the noble Duke is as applicable and insulting as it is to myself; but I do not fear to meet it single and alone. No one venerates the peerage more than I do; but, my lords, I must say that the peerage solicited me,—not I the peerage. Nay more,—I can say, and will say, that as a peer of Parliament,—as speaker of this right honourable house,—as keeper of the great seal,—as guardian of his majesty's conscience,—as lord high chancellor of England,—nay, even in that character alone in which the noble duke would think it an affront to be considered, but which character none can deny *me*—as a *man*, I am at this moment as respectable—I beg leave to add, I am at this time as much respected, as the proudest peer I now look down upon." The effect of this speech, both within the walls of Parliament and out of them, was prodigious. It gave Lord Thurlow an ascendancy in the house which no chancellor had ever possessed; it invested him in public opinion, with a character of independence and honour, and this, though he was ever on the unpopular side of politics, made him always popular with the people."—*(Butler's Reminiscences, p. 199.)*

SIR EDWARD COKE AND THE CASE OF COMMENDAMS.

The firm conduct of Sir Edward Coke, in the dispute between King James and the Judges, respecting Commendams, is highly creditable to the Chief Justice. The King imagining that his interests might probably be affected in the course of a suit which was then in progress in the King's Bench, directed the attorney-general to write a letter to Sir Edward, commanding the judges not to proceed in the cause without advising previously with his majesty. By the advice of Coke, a letter was addressed to the King, signed by all the twelve judges, stating it to be against law and their judicial oaths to forbear doing justice between the parties, and that they had therefore proceeded to a decision according to their duty. The King, after answering the arguments of his judges by letter, summoned them to appear before him at the Council Table; where, after much dispute and many reprimands, the following question was put to them. "Whether in a case where the King believed his prerogative or interest concerned, and required the judges to attend him for their advice, they ought not to stay proceedings till His Majesty had consulted them?" The other judges yielded, acknowledging it to be their duty to do so; but Coke answered, "that when that case should be he would do that which should

be fit for a judge to do." This noble reply is most creditable to the memory of Sir Edward Coke. (*See his Life in the Biog. Britt., and see Coll. Jurid.* i. 17.)

THE BILLINGSGATE OF THE LAW.

The Law Reports contain an almost infinite variety of exprobatory epithets, some of which, in the older books, are of an amusing character. In Siderfin, (*p.* 327,) there is a curious decision respecting slanderous words applied to an attorney: "*He hath no more law than Mr. C.'s bull.* Being spoken of an attorney, the court inclined that they were actionable, and that the plaintiff should have the judgment; though it was objected, that the plaintiff had not declared that Mr. C. had a bull." In the Report of the same case, (*in* 2 *Keble*, 202,) Keeling, C. J., is said to have over-ruled this objection, "for if C. had no bull, the *scandal is the greater.*" So it has been adjudged, that to say of a lawyer that he has no more law than a goose, is actionable, (*Sid.* 127;) to which a quære is added, whether it be actionable to say, "He hath no more law than the man in the moon."

There are many curious decisions respecting words imputing witchcraft, which clearly show how very prevalent that superstition was in the seventeenth century. The malign influence of the

sorcerer seems to have gained the greatest credence among the rustic part of the population, as most of the cases impute witchcraft to the charming of cattle.—Thus, in *Sid.* 424: "You enchanted my bull, and made him run mad about the common." And again, in 1 *Rol. Ab.* 45: "Thou art a witch; I will make thee say, God save my mare; I was forced to have my mare charmed for thee." It is said in this case, that in the country where the words are spoken, it is usual for men when they pass by cattle to say, "God save them," otherwise they are taken for witches. In *Cro. Eliz.* 312, the words were, "He is a witch, and bewitched my husband to death, for he made his picture in wax, and roasted it every day by the fire, until he roasted my husband to death." It was objected, that the reason given shewed the charge to be "a vain conceit;" but the court held the words to be "very heinous," and adjudged them actionable. If a man says to a woman, that she sacrificed one of her children to the devil, to the intent to bewitch his mother, an action on the case lay, for invocation of spirits was punishable by the Statute of Witches. This Statute of Witches was long a disgrace to our law; but, by the 9 *Geo.* II. c. 5, §. 3; no prosecution shall lie against any person for witchcraft, sorcery, enchantment, or conjuration, or for charging another with such offence.

Many abusive epithets occur in these cases, the very meaning of which is now lost. Thus it is laid down, that "If a man says of a counsellor of law in the North, Thou art a *daffa-down-dilly*, an action lies, with an averment, that the words signify, that he is an ambidexter." (1 *Rol. Ab.* 55.)

There prevailed at one time an absurd rule in actions of slander, that the words should always be taken in the mildest sense which could be put upon them, and that if by any intendment they could have been innocently spoken, they should not be held actionable. One of the most singular instances of the application of this rule is to be found in *Cro. Jac.* 181. The words were "H. struck his cook on the head with a cleaver, and cleaved his head; the one part lay on the one side, and the other on the other;" and they were adjudged not actionable, *it not being averred unless argumentatively, that the cook was killed.* So, where the words were, "He is a great rogue, and deserves to be hanged as well as Gale, who was condemned to be hanged at Newgate sessions;" they were adjudged not actionable, for they only shewed the defendant's opinion, and perhaps, he might not think that Gale deserved hanging. (*T. Jones*, 157.) It is scarcely necessary to add, that this rule of law has been long abandoned, and that now all words are taken in their ordinary sense.

Those who are desirous of seeing a very com-

plete collection of vituperative expressions, (not indeed of the most decent kind,) may find it in *Viner's Abridgment*, title "Actions for Words."

LEGAL POETS.

It must be confessed, that the study of the law is far from being favourable to the growth of a poetical genius. The laurel will not flourish within the precincts of Westminster-hall; and yet there are numerous instances of lawyers who have attempted to be poetical,—an attempt in which, however, very few of them have succeeded. Lord Clarendon at one period sacrificed to the Muses; and even Sir Matthew Hale was ambitious of a poet's fame. It must be admitted that Sir Matthew's verses do not possess much merit; but it may be doubted, whether they deserve the severe censure of Roger North. "He published much in speculative devotion, part prose, part verse, and the latter hobbled so near the style of the other, as to be distinguished chiefly by being worse." (*Life of Lord Guilford*, i. *p.* 116.) Aubrey tells us, that "Lord Bacon was a good poet, but concealed, as appears by his Letters."—(*Walp. Cat. Royal Authors*, ii. *p.* 205-208.) Sir Edward Coke was much attached to the practice of citing from the poets, and boasts that he has referred to Virgil three hundred times. "It standeth well," he observes "with the gravity of our lawyers to cite verses."

Lord Harcourt, Chancellor in the reign of Queen Ann, was really no mean poet, and has left some excellent verses addressed to Pope on the publication of his works. Lord Somers also was the author of some very tolerable translations from the Latin Classics, and other poems. (*See his Life, by Mr. Maddock, p.* 95.) Every one remembers Pope's praise of Lord Mansfield:

"How sweet an Ovid was in Murray lost."

We are told also, that an extemporaneous addition to Lord Lyttleton's poem of *Virtue and Fame*, by Lord Chancellor Hardwicke, had so much merit as to induce the former to observe, "If your Lordship can write such verses extempore, it is well for other poets that you chose to be Lord Chancellor rather than Laureate." His Lordship's talent is said to have descended to his son, the "all-accomplished" Charles Yorke, who has left several proofs of a fine poetical talent. Some verses addressed by him to his sister, Miss Yorke, afterwards Lady Anson, may be found in the Annual Register for 1770. "He used to call himself," says Dalrymple, in the Preface to his Memoirs, "a fugitive from the Muses." Sir John Davies, a celebrated lawyer in the reign of James I. was a poet of very considerable merit. His poem on the Immortality of the Soul, entitled *Nosce te ipsum*, is said, by a very competent judge, to be one of

the closest, the most ingenious, and at the same time the clearest pieces of reasoning ever couched in rhyme. (*See Miss Aikin's Memoirs of James* I. v. i. *p.* 93.) Lord Chancellor Hatton, whose saltatory excellences are celebrated by Gray, is said to have been addicted to the Muses, and to be the undoubted author of the four acts of the old tragedy of Tancred and Gismunda. (*Hist. of Engl. Poetry*, iii. 97.) This play is supposed to have been the joint production of five students of the Inner Temple, and was acted by that society before the queen in 1568, but not printed till 1592. It is contained in the second edition of Dodsley's Old Plays.

Sir William Blackstone was very much attached to poetical pursuits. His verses on the death of Frederick, Prince of Wales, father of George III., printed with the signature of James Clithero, are esteemed one of the best compositions in the Oxford Collection of 1751. (*See Preface to Blackstone's Rep. p.* vi. *and Catalogue of the Works of Sir William Blackstone, p.* 13.) The most pleasing of Sir William's poems is that entitled,

THE LAWYER'S FAREWELL TO HIS MUSE.

As, by some tyrant's stern command,
A wretch forsakes his native land,
In foreign climes condemn'd to roam
An endless exile from his home;

Pensive he treads the destined way,
And dreads to go, nor dares to stay;
Till on some neighbouring mountain's brow
He stops, and turns his eyes below;
There, melting at the well-known view,
Drops a last tear, and bids adieu:
So I, thus doom'd from thee to part,
Gay Queen of Fancy, and of Art,
Reluctant move with doubtful mind,
Oft stop and often look behind.

Companion of my tender age,
Serenely gay, and sweetly sage,
How blithsome were we wont to rove
By verdant hill, or shady grove,
Where fervent bees with humming voice
Around the honey'd oak rejoice,
And aged elms, with awful bend,
In long cathedral walks extend!
Lull'd by the lapse of gliding floods,
Cheer'd by the warbling of the woods,
How blest my days, my thoughts how free,
In sweet society with thee!
Then all was joyous, all was young,
And years unheeded roll'd along:
But now the pleasing dream is o'er,
These scenes must charm me now no more,
Lost to the field, and torn from you—
Farewell!—a long, a last adieu!

The wrangling courts, and stubborn law,
To smoke, and crowds, and cities draw;
There selfish faction rules the day
And pride and avarice throng the way;
Diseases taint the murky air,
And midnight conflagrations glare;
Loose revelry and riot bold
In frighted streets their orgies hold;
Or when in silence all is drown'd,
Fell murder walks her lonely round;
No room for peace, no room for you—
Adieu, celestial Nymph, adieu!

Shakespeare no more, thy sylvan son,
Nor all the art of Addison,
Pope's heaven-strung lyre, nor Waller's ease,
Nor Milton's mighty self must please:
Instead of these, a formal band
In furs and coifs around me stand,
With sounds uncouth, and accents dry,
That grate the soul of Harmony.
Each pedant sage unlocks his store
Of mystic, dark, discordant lore;
And points with tottering hand the ways
That lead me to the thorny maze.

There, in a winding, close retreat,
Is *Justice* doom'd to fix her seat;
There, fenced by bulwarks of the *Law*,
She keeps the wondering world in awe;

And there from vulgar sight retired,
Like Eastern Queens, is much admired.

Oh! let me pierce the secret shade
Where dwells the venerable maid!
There humbly mark, with reverent awe,
The Guardian of Britannia's Law;
Unfold with joy her sacred page,
(The united boast of many an age,
Where mix'd, though uniform, appears
The wisdom of a thousand years,)
In that pure spring the bottom view,
Clear, deep, and regularly true,
And other doctrines thence imbibe
Than lurk within the sordid scribe;
Observe how parts with parts unite
In one harmonious rule of right;
See countless wheels distinctly tend,
By various laws, to one great end;
While mighty Alfred's piercing soul
Pervades and regulates the whole.

Then welcome business, welcome strife
Welcome the cares, the thorns of life;
The visage wan, the pore-blind sight,
The toil by day, the lamp by night,
The tedious forms, the solemn prate,
The pert dispute, the dull debate,
The drowsy Bench, the babbling Hall,
For thee, fair *Justice*, welcome all!

Thus, though my noon of life be past,
Yet let my setting sun at last
Find out the still, the rural cell
Where sage retirement loves to dwell!
There let me taste the home-felt bliss
Of innocence and inward peace;
Untainted by the guilty bribe,
Uncursed amid the harpy tribe;
No orphan's cry to wound my ear,
My honour and my conscience clear;
Thus may I calmly meet my end,
Thus to the grave in peace descend.

CANDOUR OF AN IRISH DEPONENT.

In a very excellent series of articles, entitled "Sketches of the Irish Bar," which have lately appeared in a periodical publication, we meet with the following highly ludicrous statement in the affidavit of a "process-server."—"And this deponent further saith, that on arriving at the house of the said defendant, situate in the county of Galway aforesaid, for the purpose of personally serving him with the said writ, he, the said deponent, knocked several times at the outer, commonly called the Hall-door, but could not obtain admittance; whereupon this deponent was proceeding to knock a fourth time, when a man, to this deponent unknown, holding in his hands a musket or blunderbuss loaded with balls or slugs,

as this deponent has since heard and verily believes, appeared at one of the upper windows of the said house, and presenting said musket or blunderbuss at this deponent, threatened, 'that if said deponent did not instantly retire, he would send his, this deponent's soul, to *hell*,' *which this deponent verily believes he would have done*, had not this deponent precipitately escaped."

LORD COKE AND HIS COACHMAN.

When Sir Edward Coke was brought before the Privy Council, and reprimanded for certain supposed errors in his Reports, a singular charge was made against him by the Lord Treasurer: "The Lords having thus far proceeded, the Lord Treasurer told him, that he had one thing more to let him know, that belonged to the Earl Marshall to take notice of, which was, that his coachman used to ride bare-headed before him, which was more than he could any ways assume or challenge to himself, and required him to forbear it for the future. To which the Lord-Chief-Justice answered, that his coachman did it only for his own ease, and not by his commandment." (*Life of Coke, in Biogr. Britt.*)

BURKE'S OPINION OF LAWYERS.

Burke, who was educated to the bar, appears not to have entertained any very great respect in

his after life for the professors of the law. On the question, whether the impeachment of Warren Hastings abated by the dissolution of parliament in 1790, Burke, Fox, and Pitt maintained that it did not, contrary to the opinion of nearly all the lawyers in the house. "This circumstance drew from Mr. Burke many sarcastic remarks, especially after one of them had remarked, that they were not *at home* in that house, when Mr. Burke said, he believed they were not; 'they were birds of a different feather, and only perched in that house on their flight to another,—only resting their tender pinions there for a while, yet ever fluttering to be gone to the region of coronets; like the Hibernian in the ship, they cared not how soon she foundered, because they were only passengers; their best bower anchor was always cast in the House of Lords." In another sentence he expressed a wish to see the country governed by law, but not by lawyers. On the 14th February, when Mr. Erskine, who had already sustained many of his biting sarcasms, complained of the length of the trial, Mr. Burke, after an able defence of the managers, upon whom certainly no blame rested, in the opinions both of the ministry and opposition, asked, "whether the learned gentleman remembered, that if the trial had continued three years, the oppressions had continued or twenty years? Whether, after all, there

were hour-glasses for measuring the grievances of mankind? Or whether those whose ideas never travelled beyond a *nisi prius* cause, were better calculated to ascertain what ought to be the length of an impeachment, than a rabbit who breeds six times in a year, had to judge of the time proper for the gestation of an elephant?" Mr. Fox was equally severe in his strictures upon the legal profession. (*Prior's Life of Burke, p. 399.*) The trial of Warren Hastings, which occupied three years, might, it is said, have been concluded in two months, had the House of Lords sate like an ordinary court of judicature, ten hours a day.

PERILS OF THE LAW IN IRELAND.

The following animated description of the dangers attending the administration of the law in the sister island, is given by a very clever writer. "The office of a process-server in Ireland, appears to be, indeed, a most perilous occupation, and one that requires no common qualities in the person that undertakes it; he must unite the courage and strength of the common soldier, with the conduct and skill in stratagem of the experienced commander; for woe betide him if he be deficient in either. The moment this hostile herald of the law is known to be hovering on the confines of a Connaught gentleman's domains, (that sacred

territory into which his Majesty's writs have no right to run,) the proud blood of the defendant swells up to the boiling point, and he takes the promptest measures to repel and chastise the intruder: he summons his servants and tenants to a council of war, he stiffens their fidelity by liberal doses of the 'mountain dew,' (illicit whiskey,) they swear they will stand by 'his honour' to the last. Preparations, as against a regular siege, ensue; doors and windows are barred; sentinels stationed; blunderbusses charged; approved scouts are sent out to reconnoitre; and skirmishing parties, armed with cudgels and pitch-forks, are detached along every avenue of approach. Having taken these precautions, the magnanimous defendant shuts himself up in his inmost citadel to await the result. The issue may be anticipated; the messenger of the law is either deterred from coming near, or, if he has the hardihood to face the danger, he is way-laid, and beaten black and blue for his presumption. If he shows the king's writ, it is torn from him, and flung back in fragments in his face. Resistance, remonstrance, and entreaties are all unavailing; nothing remains for him but to effect his retreat, if the powers of moving be left him, to the nearest magistrate, not in the interest of the defendant, where, with the help of some attorney that will venture to take a fee against 'his honour,' he

draws up a bulletin of his kicks and bruises in the form of an affidavit, to found a motion 'that another writ do issue,' or as it might be more correctly worded, 'that another process-server do expose himself to as sound a threshing as the last.' "

HORNE TOOKE AND THE BAR.

The prosecution of Horne Tooke for a libel, in 1777, when he conducted his own defence, appears to have given him a great predilection for the profession of the law. In the year 1779, he applied to be called to the bar by the Benchers of the Inner Temple; but an objection was made to his call, that he had received priest's orders. Upon this occasion three Benchers only, (Sir James Burrow, Baron Mazeres, and Mr. Wood) voted in his favour, while eight voted against him. He repeated the attempt in 1782, when he had six votes in his favour and eight against him. It was subsequently determined, by an aggregate meeting of delegates from the four Inns of Court, that a person in deacon's orders ought not to be called to the bar. It is laid down by Lord Mansfield, (*Doug.* 353,) that all the power of the Inns of Court concerning admission to the bar, is delegated to them from the Judges; and that in every instance the conduct of those societies is subject to the controul of the Judges as visitors. A man-

damus will not lie to compel the Masters of the Bench of an Inn of Court to call a candidate to the bar. From the first traces of the existence of the Inns of Court, no example can be found of the interposition of the Courts of Westminster Hall proceeding according to the general law of the land, but the judges have acted as a domestic forum. (*See also 2 Br. Ch. Rep.* 241, *and* 20 *How. State Trials,* 689.)

QUARRELS BETWEEN COKE AND BACON.

The hostility which existed between these two celebrated men appears to have had its origin in professional rivalry. The seniority of Coke, and his reputation as a lawyer, had raised him to honours of which Bacon was very ambitious, and which he imagined that Coke had prevented him from obtaining, by casting reflections upon his legal acquirements. It is probable also that Coke felt some jealousy at Bacon's great proficiency in other pursuits. The different tempers of the two men, and their very opposite political principles, must likewise have tended to keep open the breach between them. Bacon had endeavoured for some time to obtain the place of Solicitor-General, and attributed his ill-success to the interference of Sir Edward Coke: under this impression, he addressed the following letter to his adversary, at that time Attorney-General:—

SIR FRANCIS BACON.

"Mr. Attorney,

"I thought it best, once for all, to let you know in plainness what I find of you, and what you shall find of me, to take to yourself a liberty to disgrace and disable my law, my experience, my discretion: what it pleaseth you I pray think of me; I am one that knows both my own wants and other men's, and it may be perchance that while mine mend, others stand at a stay. And surely I may not endure in public place to be wronged, without repelling the same to my best advantage to right myself. You are great, and therefore have the more enviers, which would be glad to have you paid at another's cost. Since the time I missed the solicitor's place, (the rather, I think, by your means,) I cannot expect that you and I shall ever serve as attorney and solicitor together; but either to serve with another upon your remove, or to step into some other course: so as I am more free than ever I was from any occasion of unworthy conforming myself to you, more than general good manners, or your particular good usuage, shall provoke; and if you had not been short-sighted in your own fortune, as I think, you might have had more use of me. But that side is passed. I write not this to show my friends what a brave letter I have written to Mr. Attorney; I have none of those humours, but that I have written is to a good end; that is,

to the more decent carriage of my master's service, and to our particular better understanding of one another. This letter, if it shall be answered by you in deed and not in word, I suppose it will not be worse for us both; else it is but a few lines lost; which for a much smaller matter I would have adventured. So this being to yourself, I for my part rest, &c."

On his obtaining office, Bacon did not scruple to use every means of rendering himself agreeable to the King, and at the same time exerted all his influence to shake the credit of his old rival, Coke, who had been promoted to the chief seat in the King's Bench. Some account of the manner in which Bacon conducted himself at this time, will be found in another part of these volumes. It is creditable to Sir Edward Coke, that on Bacon's impeachment and disgrace, he made no ungenerous use of his triumph. The differences which existed between Bacon and Coke do not appear to have put an end to all the offices of friendship between them. In the library of Mr. Coke, at Holkham, there exists a presentation copy of the *Novum Organum*, (Edit. Joan. Bell, 1620,) with an inscription in it "To Sir Edward Coke," and at the top of the title-page appear the following words in the hand-writing of Sir Edward:—

"Edward C. ex dono Authoris :
"Authori Consilium.
"Instaurare paras veterum documenta sophorum,
Instaura leges justitiamque prius."

The Honourable Charles Yorke, who had seen these lines at Holkham, remarks, in a note to Dr. Birch, preserved in the British Museum, that the verses not only reprove Sir Francis Bacon for going out of his profession, but allude to his character as a prerogative lawyer, and his corrupt administration of the Chancery. It may be observed, that the Novum Organum was published in October, 1620, a few months before Bacon's impeachment.

In the title-page of the same book, over the device of the ship passing between Hercules's Pillars, are two English verses, also in the handwriting of Sir Edward Coke, which, though intended to convey a censure upon Bacon, are, in fact, much more discreditable to the writer.

"It deserveth not to be read in Schools,
But to be freighted in the Ship of Fools."

Mr. Yorke supposes, that the conceit in the last line was suggested by a satirical work of Du Bartas, entitled The Ship of Fools.

THE CHAPTER OF THE DOUBLE MISTRESS.

One of the most amusing mockeries ever written of the solemnity of judicial proceedings, is to

be found in the 13th chapter of the "Memoirs of Martinus Scriblerus," the chapter of the Double Mistress, as it is termed. The grave humour with which the arguments of the civilians are parodied is altogether inimitable. We regret that the grossness of this witty composition prevents us from extracting any part of it into these pages. That circumstance, however, has not prevented two reverend divines, Dr. Warton and the Rev. W. L. Bowles, from inserting this chapter in their editions of the Works of Pope. It is probable, that this portion of the Memoirs of the learned Scriblerus is the joint production of Dr. Arbuthnot and Fortescue Aland, afterwards Master of the Rolls. In one of Ben Jonson's plays, (Epicene, or the Silent Woman,) there is likewise a humorous parody of the proceedings of the ecclesiastical courts.

LEGAL VULGAR ERRORS.

When the extent and intricacy of our system of law is considered, it cannot be thought surprising, that a number of vulgar errors upon legal questions should exist. Mr. Barrington, in his Observations on the Ancient Statutes, has collected a number, which we have transcribed.

"It may, perhaps, be thought singular to suppose, that this exemption from serving on juries is the foundation of the vulgar error, that a sur-

geon or butcher, from the barbarity of their business, may be challenged as jurors. It is difficult to account for many of the prevailing vulgar errors with regard to what is supposed to be law. Such are, that the body of a debtor may be taken in execution after his death; which, however, was practised in Prussia before the present king abolished it by the *Code Fredericus*. Other vulgar errors are, that the old statutes have prohibited the planting of vineyards, or the use of sawing-mills; which last notion, I should conceive to have been occasioned by 5 and 6 *Edw.* VI. *cap.* 22, forbidding what are called *gig-mills*, as they are supposed to be prejudicial to the woollen manufacture. There is likewise an act of 23 *Eliz. cap.* 5, which prohibits any iron-mills within two-and-twenty miles of London, to prevent the increasing dearness of wood for fuel. As for sawing-mills, I cannot find any statute which relates to them; they are, however, established in Scotland, to the very great advantage both of the proprietors and the country.

"It is supposed likewise to be penal to open a coal-mine, or to kill a crow, within five miles of London; as also to shoot with a wind-gun, or to carry a dark-lantern. The first of these I take to arise from a statute of Henry the Seventh, prohibiting the use of a cross-bow; and the other from Guy Fawkes's dark-lantern in the powder-

plot. To these vulgar errors may be added, the supposing that the king signs the death-warrant, (as it is called,) for the execution of a criminal; as also, that there is a statute, which obliges the owners of asses to crop their ears, lest the length of them should frighten the horses which they meet on the road.

"To these vulgar errors may be, perhaps, added, the notion, that a woman's marrying a man under the gallows will save him from the execution. This, probably, arose from a wife having brought an appeal against the murderer of her husband, who, afterwards repenting the prosecution of her lover, not only forgave the offence, but was willing to marry the appellee. It is also a prevailing error, that those who are born at sea belong to Stepney parish. I may likewise add to these, that any one may be put into the crown-office for no cause whatsoever, or the most trifling injury. An ingenious correspondent, to whom I have not only this obligation, suggests two additional vulgar errors. 'When a man designs to marry a woman who is in debt, if he take her from the hands of the priest clothed only in her shift, it is supposed that he will not be liable to her engagements.' The second is, 'That there was no land-tax before the reign of William the Third.'"

To the above enumeration, a writer in the Re-

trospective Review (vol. 9, p. 262,) has added the following observations.

"An instance of the first of these vulgar errors may be found in a note to Rousseau's *Emile*, p. 137. Rousseau had in that work adduced it as a proof of the humanity of our laws, that butchers are not received as *witnesses* in matters of life and death; but, in a note to the later editions, he adds, that the English translators of his work had corrected his mistake, and had mentioned the cause of it, *viz.* that butchers were not admitted *as jurors* in criminal cases!

"To Mr. Barrington's list of vulgar errors may be added the following:—That if a criminal has been hung and revives, he cannot afterwards be executed:—That a funeral passing over any place makes a public highway.—That a husband has the power of divorcing his wife by selling her in open market with a halter round her neck.—That second cousins may not marry, though first cousins may.—That it is necessary, in some species of legal process against the king, to go through the fiction of arresting him, which is done by placing a ribbon across the road as if to impede his carriage.—That the lord of a manor may shoot over all the lands within his manor.—That pounds of butter may be made of any number of ounces.—That bull-beef shall not be sold unless the bull has been baited previously to being killed.—That

leases are made for the term of 999 years, because a lease for 1000 years would create a freehold.—That deeds executed on a Sunday are void.—That in order to disinherit an heir at law, it is necessary to give him a shilling by the will, for that otherwise he would be entitled to the whole property."

THE "COMMON BAYLERS."

The surprise of a stranger who happens to enter Serjeant's Inn while the judges are sitting, has something very amusing in it. No sooner has his foot crossed the threshold, than a number of officious gentlemen press around him with the kind offer, "Do you want bail, Sir?" at the same time endeavouring to thrust a small piece of paper into his hand. The ready benevolence of these individuals is naturally very marvellous to him, and it is not until he learns that they expect their services to be rewarded with half-a-crown, that his surprise ceases. It is often found convenient to put in bail immediately, and the names of these men of straw are accordingly inserted, until some substantial persons can be obtained, who may be able to *justify*, or swear they are worth a certain sum. In one of the public libraries at Cambridge is preserved a small tract, which gives a curious account of this class of people, such as they existed upwards of two centuries ago. The title is as follows:

"The Discoverie of the Knights of the Poste, or the Knights of the Poste, or Common Baylers, newly descried, &c." By E. S. at London. Printed by G. S. & are to be sold neare the Golden Lyon, in the Olde Bayly. 1597."

"How doe all our ancient acquaintance, the good oath-takers, or common baylers, alias, the knights of the poste, the lords of Lob's-pound, and heires apparent to the pilory,—for it was a small matter, instead of hearing morning praier, to goe fasting before a justice, and forsweare himself, whereby he hath gotten many a crowne. When he was hired to come before any judge to baile a man, it was his accustomed use to call himself by a wrong name; and if he dwelt in Long-lane, perhaps he would say he dwelt in White-chappell, and so neither certifie them of his right name, nor of his true dwelling place, so that if any enquiery be made of him, in such place where he affirmed himself to dwell, there is no such man to be found, and by this meanes he scapes manie a scouring.

"There is a most braue fellow, but very newly crept into this crew, and his name is N., well-known, one that looks very high, and at every word casteth his eye above Powls steeple, as if he would quarrel with the moone, or had some controversie against the seuen starres. In his attire he is neat and fine, also in his speeche stately, and

of a scornfull countenance, and when he comes into Westminster Hall, he bends his browes, as if he would beare downe the King's Bench barre with his lookes.—Twenty more of such fellows could I name, if that leasure would serue me, and as I have rehearst their names, so could I shew you many of their actions, what wylie and amusing pranks they play.—And, through want of meate, many times they walke out their dinner in Duke Humfrey his allie, or else fetch a sleepe under a pillar in Powle, only to beguile hunger.—You may have them most commonly in Fleet-streete, about Serjeant's-inn, or else about Chancery-lane, or else in some of the pudding-pie houses at Westminster; out of term-time, you shall have them commonly once or twice a day, walking in Duke Humfrey's-alley, in Powles, or at the Lion, at the back-side of St. Nicholas-shambles, or at the Rose in Pannier-alley, or at the Dolphin, at the end of Carter-lane, and sometimes at the Wooll-sack, in the same Lane, and there lye crushing of the two-penny ale pot by halfe a day together.—Thus, most gentle reader, have you heard of the cunning shiftes and wicked devices of those lewde and evile-minded persons."

CHARACTER OF SAUNDERS.

One of the most admirable biographical sketches in the language is that of Sir Edmund Saunders,

Chief-Justice of the King's Bench, in the reign of Charles II., by Roger North, in the Memoirs of his Brother, the Lord Keeper Guilford. The character is drawn in North's somewhat rude style, but possesses wonderful vivacity and spirit.

"The Lord Chief-Justice Saunders succeeded in the room of Pemberton. His character and his beginning were equally strange. He was at first no better than a poor beggar-boy, if not a parish foundling, without known parents or relations. He had found a way to live by obsequiousness, (in Clement's Inn, as I remember,) and courting the attornies' clerks for scraps. The extraordinary observance and diligence of the boy, made the society willing to do him good. He appeared very ambitious to learn to write; and one of the attornies got a board knocked up at a window on the top of a staircase; and that was his desk, where he sat and wrote after copies of court and other hands the clerks gave him. He made himself so expert a writer, that he took in business, and earned some pence by hackney-writing. And thus by degrees, he pushed his faculties, and fell to forms, and, by books that were lent him, became an exquisite entering clerk; and, by the same course of improvement of himself, an able counsel, first in a special pleading, then at large. And, after he was called to the bar, had practice, in the King's Bench Court, equal with any there.

As to his person, he was corpulent and beastly; a mere lump of morbid flesh. He used to say, *by his troggs*, (such an humorous way of talking he affected,) none could say he wanted issue of his body, for he had nine in his back. He was a fetid mass, that offended his neighbours at the bar in the sharpest degree. Those whose ill-fortune it was to stand near him, were confessors, and, in summer time, almost martyrs. This hateful decay of his carcase, came upon him by continual sottishness,—for, to say nothing of brandy, he was seldom without a pot of ale at his nose, or near him. That exercise was all he used; the rest of his life was sitting at his desk, or piping at home; and that home was a tailor's house in Butcher Bow, called his lodging, and the man's wife was his nurse, or worse; but, by virtue of his money, of which he made little account, though he got a great deal, he soon became master of the family; and, being no changeling, he never removed, but was true to his friends, and they to him, to the last hour of his life.

"So much for his person and education. As for his parts, none had them more lively than he. Wit and repartee, in an affected rusticity, were natural to him; he was ever ready, and never at a loss; and none came so near as he to be a match for Serjeant Mainard. His great dexterity was in the art of special pleading, and he would lay

snares that often caught his superiors, who were not aware of his traps. And he was so fond of success for his clients, that, rather than fail, he would set the court hard with a trick; for which he met sometimes with a reprimand, which he would wittily ward off, so that no one was much offended with him. But Hales could not bear his irregularity of life; and for that, and suspicion of his tricks, used to bear hard upon him in the court. But no ill-usage from the bench was too hard for his hold of business, being such as scarce any could do but himself. With all this, he had a goodness of nature and disposition in so great a degree, that he may be deservedly styled a philanthrope. He was a very Silenus to the boys, as, in this place, I may term the students of the law, to make them merry whenever they had a mind to it. He had nothing rigid or austere in him. If any near him at the bar grumbled at his stench, he ever converted the complaint into content and laughing, with the abundance of his wit. As to his ordinary dealing, he was as honest as the driven snow was white; and why not, having no regard for money, or desire to be rich? and for good-nature and condescension there was not his fellow. I have seen him, for hours and half-hours together, before the court sat, stand at the bar, with an audience of students over against him, putting of cases, and debating so as suited

their capacities, and encouraged their industry. And so in the Temple, he seldom moved without a parcel of youths hanging about him, and he merry and jesting with them.

"It will readily be conceived, that this man was never cut out to be a Presbyter, or any thing that is severe and crabbed. In no time did he lean to faction, but did his business without offence to any. He put off officious talk of government or politics with jests, and so made his wit a catholicon or shield to cover all his weak places and infirmities. When the court fell into a steady course of using the law against all kinds of offenders, this man was taken into the king's business, and had the part of drawing, and perusal of almost all indictments and informations that were there to be prosecuted, with the pleadings thereon, if any were special, and he had the large pleadings in the *quo warranto* against London. His Lordship had no sort of conversation with him, but in the way of business, and at the bar; but once, after he was in the king's business, he dined with his lordship, and no more, and there he shewed another qualification he had acquired, and that was to play jigs upon an harpsichord; having taught himself with the opportunity of an old virginal of his landlady's; but in such a manner, not for defect, but for figure, as to see him play were a jest. The king, observing him to be of a

free disposition, loyal, friendly, and without greediness, or guile, thought of him to be the Chief-Justice of the King's Bench, at that nice time, and the ministry could not but approve of it. So great a weight was now at stake, as could not be trusted to men of doubtful principles, or such as any thing might tempt to desert them. While he sat in the Court of King's Bench, he gave the rule to the general satisfaction of the lawyers. But his course of life was so different from what it had been, his business so incessant, and withal crabbed, that the constitution of his body, or rather head, could not sustain it, and he fell into an apoplexy and palsy, which numbed his parts, and he never recovered the strength of them. He outlived the judgment in the *quo warranto;* but was not present, otherwise than by sending his opinion, by one of the judges, to be for the king, who, at the pronouncing of the judgment, declared it to the court accordingly, which is frequently done in like cases."

BURNING OF THE TEMPLE IN THE GREAT FIRE.

The great fire of 1666, extended as far as, and consumed a great part of, the Temple. The best and most minute account of this terrible conflagration is given in Clarendon's Life, from which it appears that the fire was stopped in the Temple. "On Wednesday, about four or five o'clock in the

Scott, an Englishman, is not ashamed in public print to deny that there can be such a thing as witchcraft."

The accounts vary as to the number of persons who suffered under these most cruel and absurd Statutes. Hutchinson, in his Historical Essay concerning witchcraft, tells us, that in 103 years from the statute against witchcraft in the 33 Hen. VIII. till 1644, he finds but fifteen executed; but that in the sixteen years following there were 109, if not more, condemned and hanged. In the five years following, he found five witches condemned, and three of them, if not all five, executed, and three more at Exeter, in 1682. Since that time, he informs us, he had not met with one witch hanged in England, though in Scotland and New England several had suffered: indeed, so late as the year 1692, he states that nineteen persons were hanged at Salem, in New England, and many more imprisoned. Howell, the letter-writer, states the number executed in the middle of the seventeenth century to have been much greater. In a letter, dated Feb. 3rd, 1646, and another dated Feb. 20th, 1647, he says that in two years there were indicted in Suffolk and Essex between 200 and 300 witches, of whom more than half were executed. It was not until towards the conclusion of the seventeenth century that this infamous superstition began to decline. "It is seldom,"

says Roger North, (*Life of L. K. Guilford, v.* i. *p.* 280,) "that a poor old wretch is brought to trial upon that account, but there is at the heels of her a popular rage that does little less than demand her to be put to death, and if a judge is so clear and open as to declare against that impious vulgar opinion, that the devil himself has power to torment and kill poor innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble; the countrymen (the triers) cry, this judge hath no religion, for that he doth not believe witches, and so to show that they have some, hang the poor witches." The same writer proceeds to give a curious account of two women who were tried before Mr. Justice Raymond, at Exeter, as witches, and convicted. "His Lordship was somewhat more thoughtful upon this subject, because that in the year in which Mr. Justice Raymond was his Co-Judge, on the circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rung with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, things went so far as to say that the judge's horses were at a stand, and could not draw the coach up the castle lane: all which the common sort of people firmly believed. It fell out that Ray-

Scott, an Englishman, is not ashamed in public print to deny that there can be such a thing as witchcraft."

The accounts vary as to the number of persons who suffered under these most cruel and absurd Statutes. Hutchinson, in his Historical Essay concerning witchcraft, tells us, that in 103 years from the statute against witchcraft in the 33 Hen. VIII. till 1644, he finds but fifteen executed; but that in the sixteen years following there were 109, if not more, condemned and hanged. In the five years following, he found five witches condemned, and three of them, if not all five, executed, and three more at Exeter, in 1682. Since that time, he informs us, he had not met with one witch hanged in England, though in Scotland and New England several had suffered: indeed, so late as the year 1692, he states that nineteen persons were hanged at Salem, in New England, and many more imprisoned. Howell, the letter-writer, states the number executed in the middle of the seventeenth century to have been much greater. In a letter, dated Feb. 3rd, 1646, and another dated Feb. 20th, 1647, he says that in two years there were indicted in Suffolk and Essex between 200 and 300 witches, of whom more than half were executed. It was not until towards the conclusion of the seventeenth century that this infamous superstition began to decline. "It is seldom,"

says Roger North, (*Life of L. K. Guilford, v.* i. *p.* 280,) "that a poor old wretch is brought to trial upon that account, but there is at the heels of her a popular rage that does little less than demand her to be put to death, and if a judge is so clear and open as to declare against that impious vulgar opinion, that the devil himself has power to torment and kill poor innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble; the countrymen (the triers) cry, this judge hath no religion, for that he doth not believe witches, and so to show that they have some, hang the poor witches." The same writer proceeds to give a curious account of two women who were tried before Mr. Justice Raymond, at Exeter, as witches, and convicted. "His Lordship was somewhat more thoughtful upon this subject, because that in the year in which Mr. Justice Raymond was his Co-Judge, on the circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rung with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, things went so far as to say that the judge's horses were at a stand, and could not draw the coach up the castle lane: all which the common sort of people firmly believed. It fell out that Ray-

Scott, an Englishman, is not ashamed in public print to deny that there can be such a thing as witchcraft."

The accounts vary as to the number of persons who suffered under these most cruel and absurd Statutes. Hutchinson, in his Historical Essay concerning witchcraft, tells us, that in 103 years from the statute against witchcraft in the 33 Hen. VIII. till 1644, he finds but fifteen executed; but that in the sixteen years following there were 109, if not more, condemned and hanged. In the five years following, he found five witches condemned, and three of them, if not all five, executed, and three more at Exeter, in 1682. Since that time, he informs us, he had not met with one witch hanged in England, though in Scotland and New England several had suffered: indeed, so late as the year 1692, he states that nineteen persons were hanged at Salem, in New England, and many more imprisoned. Howell, the letter-writer, states the number executed in the middle of the seventeenth century to have been much greater. In a letter, dated Feb. 3rd, 1646, and another dated Feb. 20th, 1647, he says that in two years there were indicted in Suffolk and Essex between 200 and 300 witches, of whom more than half were executed. It was not until towards the conclusion of the seventeenth century that this infamous superstition began to decline. "It is seldom,"

says Roger North, (*Life of L. K. Guilford, v.* i. *p.* 280,) "that a poor old wretch is brought to trial upon that account, but there is at the heels of her a popular rage that does little less than demand her to be put to death, and if a judge is so clear and open as to declare against that impious vulgar opinion, that the devil himself has power to torment and kill poor innocent children, or that he is pleased to divert himself with the good people's cheese, butter, pigs, and geese, and the like errors of the ignorant and foolish rabble; the countrymen (the triers) cry, this judge hath no religion, for that he doth not believe witches, and so to show that they have some, hang the poor witches." The same writer proceeds to give a curious account of two women who were tried before Mr. Justice Raymond, at Exeter, as witches, and convicted. "His Lordship was somewhat more thoughtful upon this subject, because that in the year in which Mr. Justice Raymond was his Co-Judge, on the circuit, two old women were hurried out of the country to be tried at Exeter for witchcraft; and the city rung with tales of their preternatural exploits, as the current of such tattle useth to overflow. Nay, things went so far as to say that the judge's horses were at a stand, and could not draw the coach up the castle lane: all which the common sort of people firmly believed. It fell out that Ray-

mond sate on the crown side there, which freed his Lordship of the care of such trials. But he had really a concern upon him at what happened; which was that his brother Raymond's passive behaviour should let these poor women die. The cases were so far clear, viz. that the old women confessed and owned in court that they were witches. These were two miserable old creatures, that one may say, as to sense or understanding, were scarce alive, but were overwhelmed with melancholy and waking dreams, and so stupid as no one would suppose they knew either the construction or consequence of what they said. All the rest of the evidence was trifling. I, sitting in the Court the next day, took up the file of informations taken by the justices, which were laid out upon the table, and against one of the old women read thus:—"This informant saith he saw a cat leap in at her (the old woman's) window, when it was twilight, and this informant further saith that he verily believeth the said cat to be the devil, and more saith not."—The judge made no nice distinctions, as, how possible it was for old women, in a sort of melancholy madness, by often thinking in pain and want of spirits, to contract an opinion of themselves that was false, and that their confession ought not to be taken against themselves, without a plain evidence that it was rational and sensible, no more than that of a lunatic or distracted person, but he left the

point upon the evidence fairly, (as they called it,) to the jury, and they convicted them both, as I remember, but most certainly one was hanged."

A striking instance of the real nature of these confessions, is mentioned in Sinclair's *Satan's invisible world discovered*. Several witches were tried in 1649, and all condemned except one. This woman, previous to her examination, made a confession of her dealings with the devil, and though urged to revoke it, persisted, and was taken to execution with the rest. At the stake she spoke as follows:—"Now all you that see me this day know that I am now to die a witch by my own confession, and I free all such, especially the ministry and magistrates, from the guilt of my blood. I take it wholly upon myself: my blood be upon my own head. And as I must make answer to the God of heaven presently, I declare I am as free of witchcraft as any child; but being delated by a malicious woman, and put in prison under the name of a witch, disowned by my husband and friends, and seeing no ground of hope of my coming out of prison, or ever coming in credit again, through the temptation of the devil, I made up that confession on purpose to destroy my own life, being weary of it, and chusing rather to die than live." This unhappy creature is said to have been executed amid the tears of the spectators.

Lord Chief Justice North had, upon one occasion, an opportunity of putting his more enlightened principles to the test.—"His Lordship," says Roger North, (*vol.* i. *p.* 253,) "had not the good fortune of escaping all business of that kind; for at Taunton-Dean he was forced to try an old man for a wizzard; and for the curiosity of observing the state of a male witch or wizzard, I attended in court and sate near where the poor man stood. The evidence against him was the having bewitched a girl about thirteen years old; for she had strange and unaccountable fits, and used to cry out upon him, and spit out of her mouth straight pins, and whenever the man was brought near her, she fell in her fits and spit forth straight pins. His Lordship wondered at the straight pins which could not be so well couched in the mouth as crooked ones, for such only used to be, spit out by persons bewitched. He examined the witnesses very tenderly and carefully, so as none could collect what his opinion was, for he was afraid of the jurymen's precipitancy if he gave them any offence. When the poor man was told he must answer for himself, he entered upon a defence as orderly and as well expressed as I ever heard spoken by any man, counsel or other, and if the Attorney-General had been his advocate, I am sure he would not have done it more sensibly. The substance of it was

malicious threatening, and circumstances of imposture in the girl; to which matters he called his witnesses and they were heard. After this, the judge was not satisfied to direct the jury before the imposture was fully declared, but studied and beat the bush awhile, asking sometimes one and then another question, as he thought proper. At length he turned to the Justice of Peace that committed the man, and took the first examinations, and "Sir," said he, "pray, will you ingenuously declare your thoughts, if you have any, touching these straight pins which the girl spit; for you saw her in her fit?" "Then, my Lord," said he, "I did not know that I might concern myself in this evidence, having taken the examination and committed the man; but since your Lordship demands it, I must needs say that I think the girl doubling herself in her fit, as being convulsed, beat her head down close to her stomacher, and with her mouth took pins out of the edge of that, and then righting herself a little, spit them into some by-stander's hands." This cast an universal satisfaction upon the minds of the whole audience, and the man was acquitted. As the judge went down stairs out of the Court, an hideous old woman cried, "God bless your Lordship!" "What's the matter, good woman?" said the judge. "My Lord," said she, "forty years ago they would have hanged me for a witch, and they could not, and now they would have hanged my poor son."

The reports of these witch-cases are filled with the most ludicrous and lamentable absurdities. In 2 *How. State Trials*, 1049, is the case of Mary Smith, who was tried in 1616, convicted and executed. It is difficult to imagine how such a mass of insane or perjured evidence could be collected as appears on these trials for witchcraft. Perhaps the only way of accounting for it is by supposing the imagination of the witnesses to have been affected to a degree almost amounting to insanity. The account of Mary Smith's wicked practices against Edmund Newton is admirable for its thorough absurdity. "The fourth endamaged by this hagge was one Edmund Newton: the discontentment did arise from this ground, because he had bought several bargains of Holland cheese and told them again, by which she thought her benefit to be somewhat impaired, using the like kind of trading. The manner of her dealing with him was in this sort:—At every several time of buying cheese, he was previously afflicted, (being thrice,) and at the last either she or a spirit in her likeness did appear to him, and whisked about his face (as he lay in bed,) a wet cloth of a very loathsome flavour; after which he did see one clothed in *russet*, with a little bush beard, who told him he was sent to look upon his sore leg and would heal it, but rising to show the same, perceiving he had cloven feet, refused the

offer, who then (*these being no vain conceits or phantasies, but well-advised and diligently considered observations,*) suddenly vanished out of sight. After this she sent her imps, a toad and crabs crawling about the house, which was a shop planchered with boards, where his servants, (he being a shoe-maker,) did work, one of which took that toad and put it into the fire, where it made a groaning noise for one quarter of an hour before it was consumed, during which time Mary Smith who sent it, did endure (as was reported) torturing pains, testifying the felt grief by her outcries then made." The cat which belonged to this poor old woman experienced scarcely a more lenient treatment than the toad. "After this, the witness being married unto James Scott, a great cat which kept with this witch, (of whose infernal both practises and performs we now speak,) frequented their house, and upon doing some scathe, her husband, moved therewith, thrust it twice through with his sword; which, notwithstanding those wounds received, run away; then he struck it with all his force upon the head with a great pike-staff, but could not kill her, but she leapt after this upward almost a yard from the boards of that chamber where she now was, and crept down, which he perceiving, willed his lad (a boy of fourteen years,) to drag her to the muck-hill, but was not able, and there-

dinary manner. "The law against witches does not prove that there be any, but it punishes the malice of those people that use such means to take away men's lives. If one should profess that by turning his hat thrice and crying *buz*, he could take away a man's life, (though in truth he could do no such thing,) yet this were a just law made by the state, that whosoever should turn his hat thrice and cry *buz*, with an intention to take away a man's life, shall be punished with death." "Such a law," observes Mr. Barrington, "as that suggested by Selden, may be declared not only to be ridiculous and futile, but highly unjust."

A copious article on the subject of witchcraft, and of which we have occasionally made use in the foregoing pages, is to be found in the Retrospective Review, vol. v. p. 86.

HENRY V. AND THE CHIEF-JUSTICE.

Mr. Luders, a Bencher of the Inner Temple, whose rare *Tracts* are known and highly valued by all legal antiquaries, is the author of "An Essay on the Character of Henry V. when Prince of Wales," in which he has examined and questioned the correctness of the commonly received accounts of the prince's dissolute conduct in his earlier life. He enquires at some length into the truth of the story respecting the prince rescuing a prisoner under trial, and insulting the chief-justice;

a story, which he shews to be partly founded upon dramatic exaggerations. The account of this transaction, as given by Sir Edward Coke in his Third Institute, is as follows: "This was that Prince Henry who, keeping ill-company, and led by ill-counsel, about this time, assaulted, (some say,) and struck Gascoyne, Chief Justice, sitting in the King's Bench; for that the prince endeavouring, with strong hand, to rescue a prisoner, one of his unthrifty minions, indicted and arraigned at the King's Bench bar for felony, was prevented of his purpose by the persuasion and commandment of the Chief Justice. For which the Chief Justice committed the prince to the King's Bench, whereof some of his followers instantly complained to the king, his father; who, informing himself of the true state of the case, gave God infinite thanks that he had given him such a judge as feared not to administer justice, and such a son as could suffer semblaby and obey justice. And this is that prince, who, abandoning his former company and counsel, and following the advice of grave, wise, and expert men, whom he made choice of to be of his council, became a victorious and virtuous king, and prosperous in all that he took in hand at home and abroad."

Sir Edward Coke cites as his authority Sir Thomas Ellyott's Governor and Holinshed's Chronicle. Ellyott's account of the affair is certainly

more favourable to the prince, for "being abashed, and also wondering at the marvellous gravity of that worshipful justice, the noble prince, laying his weapon apart, doing reverence, departed, and went to the King's Bench as he was commanded." In Holinshed, the passage respecting *striking the judge* first appears. It is, indeed, suspected by Mr. Luders, that this incident was probably borrowed by the historian from an old play, entitled, "The famous Victories of Henry V., containing the honourable Battle of Agincourt." (See the Collection of *Six Old Plays, on which Shakspeare founded his, &c.* 1779.) The following is the scene with the Chief Justice.

"*Enter the Young Prince with Ned and Tom.*

Henry V. Come away, my lads. Goge wounds, ye villaine, what make you here? I must goe about my businesse myselfe, and you must stand loytering here.

Theefe. Why, my Lord, they have bound mee, and will not let mee goe.

Henry V. Have they bound thee, villaine? Why, how now, my Lord!

Judge. I am glad to see your Grace in good health.

Henry V. Why, my Lord, this is my man.—'Tis marvelle you knew him not long before this. I tell you, he is a man of his hands.

Theefe. I, gogs wounds, that I am, try me who dare.

Judge. Your grace shall finde small credite by acknowledging him to be your man.

Henry V. Why, my Lord, what hath he done?

Judge. And it please your Majesty, he hath robbed a poor carrier.

* * * * *

Henry V. And will you not let him goe?

Judge. I am sorry that his case is so ill.

Henry V. Tush! case me no caseings. Shall I have my man?

Judge. I cannot, nor I may not, my Lord.

Henry V. Nay, and I shall not, say, and then I am answered.

Judge. No.

Henry V. Then I will have him.

(*He giveth him a box on the ear.*)

Ned. Gogs wounds, my Lord, shall I cut off his head?

Henry V. No! I charge you, draw not your swords.—But get you hence; provide a noyse of musitians.—Away, be gone! [*Exeunt the Theefe.*

Judge. Well, my Lord, I am content to take it at your hands.

Henry V. Nay, and you be not, you shall have more.

Judge. Why, I pray you, my Lord, who am I?

Henry V. You, who knows not you?—Why, man, you are Lord Chief Justice of England.

Judge. Your Grace hathe saide truth: therefore in striking me in this place, you greatly abuse me, and not me only, but also your father, whose lively person here in this place I do represent.—And, therefore, to teach you what prerogatives mean, I commit you to the Fleete, until we have spoken with your father.

Henry V. Why, then, belike you mean to send me to the Fleete.

Judge. I do, indeed; and therefore carry him away. [*Exeunt Henry* V. *with the officers.*"

It is unnecessary to remind the reader of the scene between Henry, the Chief Justice, and Falstaff, at the conclusion of Shakspeare's Henry IV.

LORD-KEEPER NORTH AND THE RECORDER OF COLCHESTER.

"Before I mention the further steps of his lordship's rising, I must get rid of a scurvy downfall he had, which had well nigh cost him his life. That he was what was called a sober person, was well known; but withal, that he loved a merry glass with a friend. But once in the circuit, being invited with the rest of the counsel, to dine at Colchester with the recorder, Sir John Shaw, who was well known to be one of the greatest kill-cows at drinking in the nation; he, with the rest of his brethren, by methods too well known, got very drunk. They were obliged to go on, and in that

condition mounted; but some dropped, and others proceeded. His lordship had a clerk, one Lucas, a very drunken fellow, but at that time not far gone. He thought it his duty to have a tender care of his master, who having had one fall, (contrary to the sound advice of his experienced clerk,) would needs get up again, calling him all to nought for his pains. His lordship was got upon a very spirited nag, that trotted on very hard, and Lucas came near to persuade him not to go so fast; but that put the horse upon the run, and away he went with his master full speed, so as none could follow him. The horse, when he found himself clear of pursuers, stopped his course by degrees, and went with his rider (fast asleep upon his back) into a pond to drink; and there sat his lordship upon the sally; but, before he fell, Mr. Andrew Card, now an eminent practiser of conveyancing in Gray's-Inn, and then Mr. Coleman's clerk, came up time enough to get the horse out of the pond before he fell off, else he had been lost: for which service his lordship ever had a value for Mr. Card.

"They took him into a public-house nigh at hand, and left him to the care of his man; but so dead drunk, that he knew nothing that happened to him. He was put into a bed, and the rest of the company went on, for fear of losing their market. Next morning, when his lordship awaked,

he found he was in a strange place, and that, at a fire-side in that room, there were some women talking softly, (for talk they must,) he sent out all his senses to spy, if he could, what the matter was. He could just perceive they talked of him. Then he called for Lucas, and bid all go out of the room but him; and then, 'Lucas,' said he, '*where am I?*' He was glad the danger (of which Lucas gave him a sensible account,) was over, and got him up to go after his fellows.

"I remember, when his lordship told this story of himself, he said, the image he had when his horse first trotted, and so faster and faster, was as if his head knocked against a large sheet of lead, as a ceiling over him; and, after that, he remembered nothing at all of what happened till he awoke. His lordship, of one that was not morose and uncomplaisant, was the most sober that ever marched through the world as he did. I, that was almost continually with him, never saw him in a condition they call overtaken; and the most hath been but just discoverable in his speech; for he had strength of head to bear a great deal; and when he found that infirmity coming upon him, he used to sit smiling, and say little or nothing; so harmless a thing of a *petit* good fellow was he: and this only in company that, in some sort, constrained him, and that was very seldom. As once, when he was attorney-general, he dined with

the Earl of Sandwich, and, in the afternoon, went to the privy-council to plead, upon a petition, before the king: and the next day after, the earl asked one of the lords how Mr. Attorney behaved himself; '*very well*,' said that lord. 'I thought so,' answered the earl, 'for I sent him instructed with at least three bottles in his belly.' That was a good medicine for his modesty, and, perhaps, at court, no ill preparative. But, setting aside that rhodomontade, his lordship, by a steady temperance and sobriety, held the empire of his reason, and vigour of his constitution, safe and upright till, under the cold hand of death, both fell together. But, as for such entertainments as these, it is great pity that the tokens of barbarity should yet remain; and much more, that the consequences, often fatal, should be as braves of conquests, with a people who would take it ill not to be accounted civil, wise, and learned." (*Life of Lord-keeper Guilford, vol.* i. *p.* 88.)

THE CREST OF THE TEMPLE.

The Pegasus which appears over the principal entrance of the Inner Temple, and which is the Crest of that society, takes its origin from the seal used by the first Knights Templars. Hugh de Payens and Geoffrey de St. Aldemar, had, it is said, engraved upon their seal the figures of two men riding upon one horse,—a type of their po-

verty. A rude representation of this seal may be seen in the *Historia Minor* of Matthew Paris. This emblem was corrupted by the lawyers, the successors to the Knights Templars, into a Pegasus, and to this day remains their Crest. The Society of the Middle Temple adopted the emblem of a lamb bearing a banner, or in heraldic language, *a device of a field argent charged with a cross gules, and upon the nombrel thereof a holy lamb with its nimbus and banner.* These two devices, which are scattered very liberally over all the gateways in the Temple, gave rise to the following

Epigram.

As by the Templars' holds you go,
The *horse* and *lamb*, display'd
In emblematic figures, shew
The merits of their trade.

That clients may infer from thence
How just is their profession,
The *lamb* sets forth their innocence,
The *horse* their expedition.

O happy Britons ! happy isle !
Let foreign nations say,
Where you get justice without guile,
And law without delay.

Answer.

Deluded men, these holds forego,
Nor trust such cunning elves;
Those artful emblems tend to show
Their clients, not themselves.

'Tis all a trick, these are all shams
By which they mean to cheat you;
But have a care!—for you're the lambs;
And they the wolves that eat you.

Nor let the thought of no delay,
To these their courts misguide you,
'Tis you're the showy horse, and they
The jockeys that will ride you!

POETICAL REPORTS.

Cowper, (neither the Lord Chancellor nor the Reporter, but the Poet,) in one of those beautiful and playful letters which he used to write,

"While his cold heart to ruin ran darkly the while,"

has made the following humorous proposal for the publication of poetical law-reports:—

"Poetical reports of Law-cases are not very common; yet it appears to me desirable that they should be so;—many advantages would accrue from such a measure. They would in the

first place be more commodiously deposited in the memory, just as linen, grocery, and other articles, when neatly packed, are known to occupy less room, and to lie more conveniently in any trunk, chest, or box, to which they may be committed. In the next place, being divested of that infinite circumlocution, and the endless embarrassment in which they are involved by it, they would become surprisingly intelligible in comparison with their present obscurity. And lastly, they would by that means be rendered susceptible of musical embellishment; and instead of being quoted in the country with that dull monotony, which is so wearisome to by-standers, and frequently lulls even the judges themselves to sleep, might be rehearsed in recitative, which would have an admirable effect in keeping the attention fixed and lively, and would not fail to disperse that heavy atmosphere of sadness and gravity which hangs over the jurisprudence of our country. I remember many years ago being informed by a relation of mine, who in his youth had applied himself to the study of the law, that one of his fellow students, a gentleman of sprightly parts, and very respectable talents, of the poetical kind, did actually engage in the prosecution of such a design, for reasons I suppose somewhat similar to, if not the same with, those I have now suggested. He began with Coke's Institutes, a book so rugged in its style that an

attempt to polish it seemed an Herculean labour, and not less arduous and difficult than it would be to give the smoothness of a rabbit's fur to the prickly back of a hedgehog. But he succeeded to admiration, as you will perceive by the following specimen, which is all that my said relation could recollect of the performance.

Tenant in fee-
Simple is he,
And need neither quake nor quiver,
Who hath his lands
Free from demands
To him and his heirs for ever."

The hint which he thus threw out, Cowper has himself acted upon, and has given in the following lines a report of the case of

Nose v. Eyes.

Between Nose and Eyes a sad contest arose,
The Spectacles set them unhappily wrong;
The point in dispute was, as all the world knows,
To which the said spectacles ought to belong.

So Tongue was the Lawyer and argued the cause
With a great deal of skill and a wig full of learning,
While Chief Baron Ear sat to balance the laws,
So famed for his talent of nicely discerning.

"In behalf of the Nose it will quickly appear,
And your Lordship," he said "will undoubtedly find,
That the nose has had spectacles always to wear,
Which amounts to possession time out of mind."

Then holding the spectacles up to the Court,
"Your Lordship observes they are made with a straddle
As wide as the ridge of the nose is, in short
Designed to sit close to it just like a saddle.

Again, would your Lordship a moment suppose
(Tis a case that has happen'd, and may be again)
That the visage or countenance had not a nose,
Pray who would, or who could, wear spectacles then?

On the whole, it appears, and my argument shews,
With a reasoning the Court will never condemn,
That the spectacles plainly are made for the nose
And the nose was as plainly intended for them."

Then shifting his side as a lawyer knows how,
He pleaded again in behalf of the eyes,
But what were his arguments few people know,
For the Court did not think they were equally wise.

So his Lordship decreed with a grave solemn tone,
Decisive and clear without one if or but,
That whenever the nose put his spectacles on,
By day-light or candle-light, eyes should be shut.

(*Life of Hayley*, vol. i. *p*. 298.)

Cowper was probably not aware that an ingenious author has actually versified the substance of Sir Edward Coke's Reports. The point of each case, (with the name,) is comprised in a couplet, as in the following instances :—

ARCHER. If he for life enfeoff in fee
It bars remainders in contingency.

SNAGG. If a person says, "he kill'd my wife,"
No action lies if she be yet alive.

FOSTER. Justice of Peace may warrant send
To bring before him such as do offend.

The only other instance which at present occurs to us of a poetical Report, is a poor-law case in Burns' Justice, which runs as follows :—

A woman having a settlement
Married a man with none;
The question was, he being dead,
If that *she* had was gone.

Quoth Sir John Pratt, "The settlement
Suspended doth remain,
Living the husband, but him dead,
It doth revive again."

Chorus of the Puisne Judges.

"Living the husband, but him dead,
It doth revive again!"

AN AGREEABLE SURPRISE.

Lutwyche in speaking of the inconvenience of suffering small debts to be recovered in the superior Courts at Westminster, thus quaintly expresses himself in the law-language of his day :—

"Mes en ceux matters nous doiomus aver greinder regard al benefit del publick que al enlargement de nostre jurisdictions, car si cest action giseroit, là serroit nul remedy en effects pur petits debts en les superior Courts, le attorney pur le plt sovent foits recover le debt et receive l'argent, mes quand le Plt. expect d'aver l'argent del attorney, *en lieu de ceo il receive un Bill de son attorney per que ouster le debt receive il est debtor a son attorney*; issint que il avoit estre mieux pur luy d'avoir perde son debt, pluis toft que a prendre ceo remedy. (2 *Lutw.* 1570.)

MR. BUTLER'S ADVICE ON THE STUDY OF REAL PROPERTY LAW.

"The student should begin by reading *Littleton's Tenures*, with extreme attention, meditating on every word, and framing every section into a diagram, abstaining altogether from the Commentary, but perusing *Gilbert's Tenures*. After this, he should peruse *Sir Martin Wright's Tenures*, and *Mr. Watkins's Treatise on Descents*, and then give *Littleton's Tenures* a second perusal.

JUDGE LITTLETON.

After this second perusal of the text, he should peruse it a third time, with the *Commentary of Lord Coke*; and afterwards peruse *Sheppard's Touchstone* in Mr. Preston's invaluable edition of that work. The Reminiscent presumes to suggest, that the student may then usefully peruse the *Notes on Feuds, on Uses, and on Trusts*, in the last edition of Coke upon Littleton, and then read Littleton and Coke, and the *Notes of the last Editors*.

"The Reminiscent may appear to recommend too much attention to Littleton and Coke; but he never has yet met with a person thoroughly conversant in the law of real property, who did not think with him, that *he* is the best lawyer, and will succeed best in his profession, who best understands Coke upon Littleton. Against one error he begs leave particularly to caution the student;—not to suspect for a moment, that because he himself does not see the utility of what he reads in this work, or the application of the parts of it which he is reading to any practical purpose, it is therefore useless. There is not, in the whole of the golden book, a single line which the student will not, in his professional career, find on more than one occasion, eminently useful.

"Being thus saturated with the venerable black-letter, he should peruse with the most profound attention, *Mr. Saunders's Treatise on Uses*

and Trusts, and *Mr. Preston's Treatise on Fines and Recoveries*, and then proceed to *Mr. Fearne's Essay on Contingent Remainders*, and *Mr. Sugden's Treatise on Powers*. After this, he should read for law, *Plowden's Commentaries*, for equity, the article *Chancery*, in *Comyns's Digest*, comparing it throughout with *Mr. Peere Williams's Reports*, in Mr. Cox's edition, and reading all the cases to which these refer. His own experience and feelings will then direct his future studies.

"But in the outset of his study he should place himself with some professional gentleman engaged in drawing conveyances or forensic proceedings, and as far as it is compatible with this engagement, should attend the courts of justice.

"The whole course of study suggested by the Reminiscent may be achieved in four years, if they are employed in the manner described in the well-known verses of Lord Coke:

"Sex horas somno, totidem des legibus æquis,
Quatuor orabis, des epulisque duas,
Quod superest sacris ultro largite camænis."

"If the student cannot bestow the whole of this period on legal reading, he should peruse Mr. *Cruise's Digest*, an able abridgment, but not without original matter, of the most useful parts of all the works which we have recommended the student to peruse." (*Butler's Reminiscences*, *p.* 64.)

CHARACTER OF THE LORD-KEEPER GUILFORD IN EARLY LIFE.

"I have so far conducted his lordship, as to be ready for the bar. But, before I touch upon that, I shall take some notice of his character, as the same appeared in the first stage of his life. He was of a low stature, but had an amiable ingenious aspect, and his conversation was answerable, being ever agreeable to his company. His hair grew to a considerable length, but was hard and stiff, and did not fall as the rest of the family, which made it bush somewhat, and not without a mixture of red and grey. As to his humour, he was free from vanity himself, and hated it in others. His youthful habits were never gay, or topping the mode, like other inns of court gentlemen, but always plain and clean, and shewed somewhat of firmness or solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In those things, to the extreme was his aim; that is, not to be censured for a careless sloven, rather than to be commended for being well-dressed. But, as to his appearing in public, the composition of his temper was extraordinary, for he had wit, learning, and elocution, and knew it, and was not sensible of any notable failings, whereof to accuse himself; and yet was modest, even to a weakness. I believe a more

shamefaced creature than he was, never came into the world: he could scarce bear the being seen in any public places. I have heard him say, that, when he was a student, and ate in the Temple-hall, if he saw any company there, he could not walk in till other company came, behind whom, as he entered, he might be shaded from the view of the rest; and he used to stand dodging at the screen till such opportunity arrived, for it was death to him to walk up alone in open view. This native modesty was a good guard against vice, which is not desperately pursued by young men without a sort of boldness and effrontery in their natures. Therefore ladies, and other fond people, are greatly mistaken, when they desire that boys should have the garb of men, and usurp assurance in the province of shamefacedness. Bashfulness in the one hath the effect of judgment in the other: and where judgment, as in youth, is commonly wanted, if there be not modesty, what guard has poor nature against the incentives of vice? Therefore it is an happy disposition; for when bashfulness wears off, judgment comes on; and by judgment, I mean a real experience of things that enables a man to choose for himself, and, in so doing, to determine wisely.

"His loose entertainments, in this stage, were, as usual with gentlemen cadets of noble families in the country, sporting on horseback; for which

there was opportunity enough at his grandfather's house, where was a very large and well-stocked deer-park, and, at least twice a week in the season, there was killing of deer. The method then was, for the keeper, with a large cross-bow and arrow, to wound the deer, and two or three disciplined park-hounds pursued till he dropped. There was most of the country sports used there for diverting a large family, as setting, coursing, bowling; and he was in it all; and, within doors, backgammon and cards with his fraternity and others, wherein his parts did not fail him, for he was an expert gamester. He used to please himself with raillery, as he found any that, by minority of age, or majority of folly and self-conceit, were exposed to be so practised upon. I could give instances enough of this sort, and not unpleasant, if such trifles were to be indulged in a design such as mine is. His most solemn entertainment was music, in which he was not only master but doctor. This for the country; where, to make good his exhibition, he was contented (though, in truth, forced,) to pass the greater part of his time. But in town he had his select of friends and acquaintance; and with them he passed his time merrily and profitably, for he was as brisk at every diversion as the best. Even after his purse flowed sufficiently, a petit supper and a bottle always pleased him; but he fell into no

course of excess or vice; and whenever he was a little overtaken, it was a warning to him to take better care afterwards: and against women his modesty was an effectual guard; though he was as much inclined as any man, which made him desirous to marry; and that made his continence a positive virtue; for who may not be good that is not inclined to evil? The virtue of goodness is, where a contrary inclination is strove with and conquered. He was in town a noted hunter of music-meetings; and very often the fancy prevailed to go about town and see trades work; which is a very diverting instructive entertainment. There was not any thing extraordinary which he did not, if he might, visit for his information as well as diversion; as engines, shews, and lectures, and even so low as to hear Hugh Peters preach. I have heard him say, that when Hugh made his close, he told his congregation, that a gifted brother had a desire to hold forth; and then up rose Sir Peter Pet; and he, though a mere layman, prayed and preached his turn out. That gentleman lived to be an old man in town; and most people knew him, that little thought he had been once a preacher. The old Lord and Lady Anglesey (while she lived,) supported him; and, at the revolution, Sir Peter and his lordship published books, wherein one of the performances lay in the commending each other; which notable

band of friendship had its root in the time of the Irish rebellion." (*Life of Lord Guilford, vol.* i. *p.* 43.)

CERTAINTY TO A CERTAIN INTENT IN EVERY PARTICULAR.

When a fact is stated with such precision as to exclude every implication contrary to such statement, it is said, in legal language, to be "certain to a certain intent in every particular;" and this is termed the highest degree of certainty, as though there were degrees of comparison in certainty, (in the manner of the Irishman's portrait, which was more like than the original.) In the following passage Lord Eldon appears to have employed this highest degree of certainty in defining the exact shade of doubt with which his mind was impressed.

In this case a specific performance of an agreement was sought, and a variation was attempted to be introduced by parol, on the ground of mistake and surprise, which was positively denied by the defendant. "His Lordship said that he would not say that upon the evidence without the answer, he should not have had so much doubt whether he ought not to rectify the agreement, as to take more time to consider whether the bill should be dismissed!" (*Marquis of Townsend* v. *Stangroom,* 6 *Ves. p.* 328.)

CEREMONIES FORMERLY OBSERVED ON THE CREATION OF A JUDGE.

"The Lord Chancellor having taken his seat in the Court where the vacancy is to be filled, bringing with him the King's letters patent, shall cause the sergeant elect to be brought in, to whom, in open Court, he notifies the King's pleasure, causing the letters to be publicly read; which done, the Master of the Rolls shall read to him the oath that he is to take, 'that he shall indifferently minister justice to all men, as well foes as friends, that shall have any suit or plea before him; and this he shall not forbear to do, *though the King's Letters,* or by express word of mouth would command the contrary;* and that from time to time he shall not receive any fee or pension, or living of any man, but of the King only, nor any gift, reward, or bribe, of any man having suit or plea before him, saving meat and drink, which shall be of no great value;'† and on this oath

* As to the oath of the Judges, see 3 *Inst.* 223. Lord Coke in resisting the King's commands in the case of Commendams, relied upon this oath. See 1 *Col. Jur.* 1.

† Sir Matthew Hale appears to have put a very strict construction on these words. See his Life, by Burnet, p. 31.

being administered, the Chancellor shall deliver to him the King's Letters aforesaid, and the Lord Chief Justice of the Court shall assign him a place in the same, where he shall then place him, and which he shall afterwards keep.

"The Justice thus made, shall not be at the charges of any dinner, solemnity, or other costs, because there is no degree in the faculty of the law, but an office only, and a room of authority to continue during the King's pleasure.

"The Judges anciently rode to Westminster in great state after they were so made. Mr. Justice Coventrie, a Bencher of the Inner Temple, being chosen a Judge of the Common Pleas, proceeded from his chambers in Serjeant's Inn to Westminster, accompanied by the gentlemen of the Temple and the Students of the Inns of Chancery. The Judge went foremost, after him the Bench, and then the Bar, then the Gentlemen of the House, and then the Students of the various Inns. But the order of this procession being found to be erroneous, (for the Inns of Chancery should go first, then the young Gentlemen of the House in which the Judge has studied, then the Bar, then the Bench, after that the ancients, and last of all the Judge,) the error was corrected on the following day, in accompanying Judge Tanfield of the Temple.

"In the same manner was conducted the pro-

cession of Sir Henry Montague, who succeeded Sir Edward Coke in the Chief Justiceship of the King's Bench, Michaelmas Term, 1616.* First went on foot the young Gentlemen of the Inner Temple, (of which house he was,) after them the Barristers, according to their seniority, next the Officers of the King's Bench, then the Chief Justice himself on horseback in his robes, the Earl of Huntingdon on his right and the Lord Willoughby of Eresby on his left, with about fifty Knights and Gentlemen of quality following." (*Herbert's Inns of Court*, 91.)

ELOQUENCE OF THE EARLY ENGLISH LAWYERS.

The early English Lawyers do not appear, from what we know of the subject, to have been a very eloquent race of men. If we may judge from the reports transmitted to us in the year-books, their arguments were exceedingly pithy, and never wandered beyond the technical limits of the question. There is a passage in Sir Thomas Elyot's Governor, which confirms this view of the subject. "But for as much as the tongue wherein it (the law,) is spoken, is barbarous, *and the stirring of affections of the mynde in this nature was*

* See Bacon's Speech to Montague, on his being sworn in as Chief Justice, *Moor's Rep.* 826.

never used, therefore there lacketh elocution and pronunciation, two of the principal parts of rhetorike, notwithstanding some lawyers, if they be well reteined, will in a meane cause pronounce right vehemently." (*Governor, p.* 48.) The *vehemence* of the Lawyers is also noticed by Ascham in his Toxophilus: "When a man is alwaye in one tune like a humble bee, or els now in the top of the church, now downe no man knoweth where to have him, or piping like a reed, or *roaring like a bull,* as some Lawyers do, who think they do best when they cry loudest; these shall never greatly move, as I have known many well learned have done, because their voice was not stayed afore with learning to singe." (*Toxoph. p.* 30.)

Our old Lawyers appear to have been even more noisy than some of their brethren at the present day. "You are," says Lord Bacon in his speech to Sir Henry Montague, when the latter was sworn in as Lord Chief Justice, "You are to admonish, to reprehend, and to correct lawyers that observe not that discretion and duty which it becomes them. It is said, in France, that there is a *rabiosa litigandi facultas*; if you find this in any *brabbling and tumultuous Lawyers,* you are not only to enjoin them silence, but to sequester them from their practice of exercise before you, if you see cause." *Moor's Rep.* 827.

The lawyers of Elizabeth and James's day were

much too quaint to be eloquent. Some idea may be formed of their style, by looking into the judgments in Coke's Reports, and into the speeches in the State Trials. *Chudleigh's Case* on the Statute of Uses, 1 *Rep.*, furnishes some excellent specimens of the judicial eloquence of that period. Thus, "Baron Clarke said some have supposed these future uses were preserved in the bowels of the land, and that the land should be charged with them in whose hands soever it should come; and some have supposed they were preserved *in nubibus* and in the custody of the law, but he said, in our case, be they below in the land, there they should be perpetually buried and should never rise again, and be they above in *nubibus*, in the clouds, there they should always remain and should never descend." Another of the Judges "resembled the Statute of Uses to Nebuchadnezzar's Tree." Sir Edward Coke may, perhaps, be said to furnish a fair specimen of the forensic oratory of his time, and his speech, when Attorney-General, on the trial of Garnet the Jesuit, may be taken as a favourable example of his powers. It is full of the quaintness which at that day was so much in fashion. "He hath many gifts," says Coke, speaking of Garnet, "and endowments of nature, by art learned, a good linguist, and by profession a Jesuit, and a Superior, as indeed he is superior to all his predecessors in devilish treason; a doctor

of Jesuits, that is, a doctor of five D D's, as dissimulation, deposing of Princes, disposing of kingdoms, daunting and deterring of subjects, and destruction." (2 *St. Tr.* 234.)

In the reign of Charles I. a finer style of oratory began to prevail in our Courts of Justice, as the following speech of Lord Chief Justice Crewe, will sufficiently demonstrate. In the year 1626, a contest arose on the death of Henry de Vere, Earl of Oxford, respecting the right to that Earldom, between Robert de Vere, claiming under an entail created 16 Rich. II. as heir male of the body of Aubrey de Vere, and Lord Willoughby of Eresby, claiming as heir general to the last Earl. The following is the eloquent exordium of Chief Justice Crewe's speech upon this occasion.

"This great and weighty cause, incomparable to any other that hath happened at any time, requires great deliberation, and solid and mature judgment to determine it; and I wish that all the Judges of England had heard it, (being a fit case for all,) to the end we all together might have given our humble advice to your Lordships herein. Here is represented to your Lordships *certamen honoris*, and as I may well say *illustris honoris*, illustrious honour. I heard a great peer of this realm and a learned, say, when he lived there was no King in Christendom had such a subject as Ox-

ford.* He came in with the Conqueror, Earl of Gwynes; shortly after the Conquest, made Great Chamberlain of England, above 500 years ago, by Henry I. the Conqueror's son, brother to Rufus; by Maud, the Empress, Earl of Oxford; confirmed and approved by Henry II. *Alberico comiti*, so Earl before. This great honour, this high and noble dignity, hath continued ever since in the remarkable surname of De Vere, by so many ages, descents, and generations, as no other kingdom can produce such a peer in one and the self-same name and title. I find in all this length of time but two attainders of this noble family, and those in stormy and tempestuous times, when the government was unsettled and the kingdom in competition. I have laboured to make a covenant with myself that affection may not press upon judgment, for I suppose there is no man that hath any apprehension of gentry or nobleness, but his affection stands to the continuance of so noble a name and house, and would take hold of a twig or a twine-thread to uphold it. And yet Time hath his revolutions;—there must be a period and an end to all temporal things—*finis*

* It has been said that the three noblest names in Europe were the De Veres of England, the Fitzgeralds of Ireland, and the Montmorencys of France.

rerum, an end of names and dignities, and whatsoever is terrene, and why not of De Vere? For where is Bohun? Where is Mowbray? Where is Mortimer? Nay, which is more and most of all, where is Plantagenet? They are entombed in the urns and sepulchres of mortality.—And yet let the name and dignity of De Vere stand so long as it pleaseth God!" (*See Sir W. Jones's Rep.* 101.)

BAXTER AND JEFFERIES.

The coarse violence of Jefferies's temper was never exhibited in a stronger light than upon the trial of Richard Baxter, the well-known non-conformist minister; he was indicted for his Paraphrase on the New Testament, and committed to the King's Bench, on a warrant issued by Jefferies. "He was," says Mr. Fox, "a pious and learned man, of exemplary character, always remarkable for his attachment to monarchy, and for leaning to moderate measures, in the differences between the church and those of his persuasion. The pretence for this prosecution was a supposed reference of some passages in one of his works to the bishops of the Church of England, a reference which was undoubtedly not made by him, and which certainly could not have been made out to any jury that had been less prejudiced, or under any other direction than that of Jefferies. The

real motive was his desire of punishing an eminent dissenting minister, whose reputation was high among his sect, and who was supposed to favour the political opinions of the whigs." (*Fox's Historical Work, p.* 96.) On May 14, 1685, being indisposed, Baxter moved, by his Counsel, that he might have further time given him for his trial; a request which was denied, Jefferies exclaiming, "I will not give him a minute's time more to save his life. We have had to do with other sort of persons; but now we have a saint to deal with, and I know how to deal with saints as well as sinners. Yonder stands Oates in the pillory, (as he actually did at that time in New Palace Yard,) and he says he suffers for the truth, and so says Baxter; but if Baxter did but stand on the other side of the pillory with him, I would say two of the greatest rogues and rascals in the kingdom stood there." On the 30th May, he was tried at Guildhall, before Jefferies, when his Counsel, Mr. Wallop, made the following observations: "He conceived," he said, "that the matter depending, being a point of doctrine, ought to be referred to the Bishop, his Ordinary; but if not, he humbly conceived the doctrine was innocent and justifiable; setting aside the *inuendos* for which there was no colour, there being no antecedent to refer them to, (that is, no Bishop or Clergy of the Church of England named,) he

said, the Book accused, i. e. the Comment on the New Testament, contained many eternal truths; but they who drew the information were the libellers, in applying to the Prelates of the Church of England, those severe things which were written concerning some Prelates who deserved the character he gave. 'My Lord,' (said he,) 'I humbly conceive the bishops Mr. Baxter speaks of, as your Lordship, if you have read Church history, must confess, were the plagues of the church and the world.' 'Mr. Wallop,' (said the Lord Chief Justice,) 'I observe you are in all these dirty causes; and were it not for you Gentlemen of the Long Robe, who should have more wit and honesty than to support and hold up these factious knaves by the chin, we should not be at the pass we are at.' 'My Lord,' (said Mr. Wallop,) 'I humbly conceive that the passages accused are natural deductions from the text.' 'You humbly conceive,' said Jefferies, 'and I humbly conceive! swear him, swear him!' 'My Lord,' said he, 'under favour I am counsel for the defendant, and if I understand either Latin or English, the information now brought against Mr. Baxter upon so slight a ground, is a greater reflection upon the Church of England, than anything contained in the book he is accused for.' 'Sometimes you humbly conceive,' replied Jefferies, 'and sometimes you are very positive; you talk of

your skill in church history, and your understanding Latin and English.—I think I understand something of them as well as you; but in short, I must tell you that if you do not understand your duty better, I shall teach it you.' Upon which Mr. Wallop sat down."

On Baxter asserting that he had acted moderately with respect to the Church of England, and thereby incurred the censure of many of the dissenters, Jefferies exclaimed, "Baxter for Bishops! that is a merry conceit indeed! turn to it, turn to it!" Upon this one of Baxter's counsel turned to a place in the book where it was said, that great respect is due to those truly called to be Bishops among us. "Ay," said Jefferies, "that is your Presbyterian cant, 'truly called to be Bishops!' that is himself and such rascals called to be Bishops of Kidderminster, (where Baxter was used to preach,) and such other like places; Bishops set apart by such factious, snivelling Presbyterians as himself; a Kidderminster Bishop he means, according to the saying of a late learned author, and every parish shall maintain a tythe-pig metropolitan." Mr. Baxter beginning to speak again, Jefferies interrupted him: "Richard, Richard, dost thou think we will hear thee poison the Court? Richard, thou art an old fellow, an old knave; thou hast written books enough to load a cart; every one is as full of sedition, I might say

treason, as an egg is full of meat: hadst thou been whipt out of the writing trade, forty years ago, thou hadst been happy. Thou pretendest to be a preacher of the Gospel of Peace, and thou hast one foot in the grave; it is time for thee to begin to think what account thou intendest to give; but leave thee to thyself, and I see thou wilt go on as thou hast begun; but by the grace of God I will look after thee; I know thou hast a mighty party, and I see a great many of the brotherhood in corners waiting to see what will become of their mighty Don; and a doctor of the party, (looking at Doctor Bates,) at your elbow; but by the grace of Almighty God I will crush you all."

When Jefferies had finished his address to the Jury, Baxter said to him, "Does your Lordship think any Jury will pretend to pass a verdict upon me after such a trial?" "I'll warrant you, Mr. Baxter," said the Chief Justice, "don't trouble yourself about that." The prediction was correct, for the Jury immediately found the prisoner guilty, and he was fined 500l. As he was leaving the bar, he told Jefferies that a predecessor of his (meaning Sir M. Hale,) had other thoughts of him; to which Jefferies replied, that there was not an honest man in England but what took him for a great knave." (xi. *State Trials*, 494.)

SINGULAR BILL IN EQUITY.

It is said that a bill was once brought in the Exchequer by a highwayman, of the name of Everett, against his Coadjutor, (Williams,) in order to compel the latter to account for a moiety of the partnership effects. The Bill did not state the unlawful employment in direct terms, but alleged that the plaintiff was skilled in dealing in several commodities, such as plate, rings, watches, &c.;—that the defendant applied to him to become a partner, that they entered into partnership, and it was agreed that they should equally provide all sorts of necessaries, such as horses, saddles, and bridles, and should equally bear all expenses on the roads, and at inns, taverns, or alehouses, or at markets or fairs. "And your Orator and the said Joseph Williams proceeded jointly, and with good success, in the same business on Hounslow heath, where they dealt with a gentleman for a gold watch; and afterwards the said Joseph Williams told your Orator that Finchley, in the county of Middlesex, was a good and convenient place to deal in, and that commodities were very plenty at Finchley aforesaid, and that it would be almost all clear gain to them; that they went accordingly, and dealt with several gentlemen, for divers watches, rings, swords, canes, hats, cloaks, horses, bridles, saddles, and other things,

and that about a month afterwards, the said Joseph Williams informed your Orator that there was a gentleman at Blackheath, who had a good horse, saddle, bridle, watch, sword, cane, and other things to dispose of, which he believed might be had for little or no money; that they accordingly went and met with the said gentleman, and after some small discourse, they dealt for the said horse, &c. That your Orator and the said Joseph Williams continued their joint dealings together at several places; viz. at Bagshot, in Surrey; Salisbury, in Wiltshire; Hampstead, in Middlesex; and elsewhere to the amount of 2000l. and upwards." The rest of the bill was in the ordinary form for a partnership account. It was referred for scandal and impertinence, and the solicitors were attached and fined, while the Counsel, who signed the bill, was directed to pay the costs. The plaintiff was afterwards executed, and one of the solicitors convicted of a robbery and transported. (*See Appendix to Clifford's Report of Southw. Elec. European Mag.* v. ii. *p.* 360. *Noy's Maxims*, 9th *Edit.* 205.

SUMPTUARY LAWS OF THE TEMPLE RESPECTING DRESS.

The young lawyers of former days, if we may judge from the various orders of the inns of court respecting dress, were exceedingly sumptuous in

their apparel. In 4 *Ph.* and *M.* it was ordered, "That none of this society should thenceforth wear any great *brysches* in their hoses, made after Dutch, Spanish, or Almon fashion, or lawnde upon their cappes, or cut doublets, upon pain of 3s. 4d. forfeiture for the first default, and the second time to be expelled the house." In 26 *Elis.* the following regulations were directed to be observed: "1. That no great ruff should be worn. 2. Nor any white colour in doublets or hozen. 3. Nor any facing of velvet in gowns, but by such as were of the bench. 4. That no gentlemen should walk in the streets in their cloaks, but in gowns. 5. That no hat, or long or curled hair, be worn. 6. Nor any gowns but such as were of a *sad* colour." By an order made 11 *Charles* I. no gentlemen of any house were to come into the several halls, or places of public prayer, with hats, cloaks, boots, spurs, swords, or daggers, or to wear long hair, but were to order their habits and hair to decency and formality, according to the orders of the house, and to yield due respect and observance to the benchers and ancients, their governors, as they expected and desired to receive the preferment of the bar, &c." Even Sir Matthew Hale, in his earlier days, "loved fine clothes," though on his devoting himself to the study of the law, "he threw them aside, and betook himself to a plain fashion, which

he continued to use, in many points, to his dying day." The plainness of Sir Matthew Hale's apparel proved upon one occasion somewhat inconvenient to him. "Passing from the extreme of vanity in his apparel to that of neglecting himself too much, he was once taken, when there was a press for the king's service, as a fit person for it, for he was a strong and well-built man; but some that knew him coming by, and giving notice who he was, the pressmen let him go. This made him return to more decency in his clothes; but never to any superfluity or vanity in them."

"He was a great encourager," continues Burnet, "of all young persons that he saw followed their books diligently, to whom he used to give directions concerning the method of their study, with a humanity and sweetness that wrought much on all that came near him; and, in a smiling pleasant way, he would admonish them, if he saw any thing amiss in them, *particularly if they went too fine in their clothes*, he would tell them that it did not become their profession. *He was not pleased to see students wear long perriwigs*, or attornies go with swords; so that such young men as would not be persuaded to part with these vanities, when they went to him laid them aside, and went as plain as they could, to avoid the reproofs which they knew they might otherwise expect." (*Life of Hale, p.* 23.)

Of the Lord Keeper Guilford, we are told by his brother, that "His youthful habits were never gay or topping the mode, *like other Inns of Court gentlemen*, but always plain and clean, and shewed somewhat of firmness and solidity beyond his age. His desire was rather not to be seen at all, than to be marked by his dress. In those things to the extreme was his aim, that is, not to be censured for a careless sloven, rather than to be commended for being well-dressed." (*Life of North, vol.* i. *p.* 44.)

SIR WALTER RALEIGH AND SIR EDWARD COKE.

Whatever may have been Raleigh's guilt, (and whether he was, in fact, involved in any treasonable plot, appears exceedingly problematical,) nothing can justify the intemperance and violence displayed towards him by Sir Edward Coke, who, at the time of his trial, in 1603, was Attorney General. Osborn has remarked, that "Sir Walter Raleigh was tired out of his life by the bawling of the king's counsel on the one side, and the bench insisting on a confession extorted by fear from the Lord Cobham, on the other." It is thought that Bacon alludes to the conduct of Coke upon this occasion, in a letter which he addressed to him some years afterwards, in which we find the following expressions. "As in your pleadings you were wont to insult over misery, and to inveigh

bitterly against the persons, which bred you many enemies, whose poison yet swelleth, and the effects now appear, &c." (*Bacon's Works*, iv. 626.) The following extract from the Trial of Raleigh, gives a very unfavourable impression of Coke's temper and humanity.

"*Raleigh.* You have not proved any one thing against me by direct proofs; but all by circumstances.

Att. Have you done? The king must have the last.

Raleigh. Nay, Mr. Attorney, he which speaketh for his life must speak last. False repetitions and mistakings must not mar my cause. You should speak *secundum allegata et probata.* I appeal to God and the king on this point, whether Cobham's accusation be sufficient to condemn me?

Att. The king's safety and your clearing cannot agree. I protest, before God, I never knew a clearer treason.

Raleigh. I never had intelligence with Cobham since I came to the Tower.

Att. Go to! I will lay thee upon thy back, for the confidentest traitor that ever came at a bar. Why should you take 8000 crowns for a peace?

Lord Cecil. (One of the commissioners who presided at the trial.) Be not impatient, good Mr. Attorney; give him leave to speak!

Att. If I may not be patiently heard, you will

encourage traitors and discourage us. I am the king's sworn servant, and must speak. If he be guilty, he is a traitor; if not, deliver him.

Note. Here Mr. Attorney sat down in a chafe, and would speak no more until the commissioners urged and entreated him. After much ado, he went on, and made a long repetition of all the evidence, for the direction of the jury, and at the repeating of some things Sir Walter Raleigh interrupted him, and said he did him wrong.

Att. Thou art the most vile and execrable traitor that ever lived.

Raleigh. You speak indiscreetly, barbarously, and uncivilly.

Att. I want words sufficient to express thy viperous treasons.

Raleigh. I think you want words, indeed; for you have spoken the same things half a dozen times.

Att. Thou art an odious fellow; thy name is hateful to all the realm of England for thy pride.

Raleigh. It will go near to prove a measuring cast between you and me, Mr. Attorney.

Att. Well, I will now make it appear to the world, that there never lived a viler viper on the face of the earth than thou art."

In another part of the trial, Coke was, if possible, even more coarse and violent.

" *Raleigh.* I do not hear, yet, that you have

spoken one word against me; here is no treason of mine done; if my Lord Cobham be a traitor, what is that to me?

Att. All that he did was at thy instigation, thou viper, for I *thou* thee, thou traitor.

Raleigh. It becometh not a man of quality and virtue to call me so.—But I take comfort in it, it is all you can do.

Att. Have I angered you?

Raleigh. I am in no case to be angry.

C. J. Popham. Sir Walter Raleigh, Mr. Attorney speaketh out of the zeal of his duty for the service of the king; be valiant on both sides."

It has been thought that Shakspeare alludes to Coke's expression, *for I thou thee, &c.* in Twelfth Night, where he makes Sir Toby, in giving directions to Sir Andrew for his challenge to Viola, say, "If thou *thousts* him some thrice, it may not be amiss." But the phrase was probably a common one at that day.

Amongst other unmannerly and abusive epithets which the Attorney General bestowed upon Raleigh, he called him a "damnable atheist;" an accusation to which Sir Walter's philosophical pursuits had probably subjected him. When, after the lapse of several years, Sir Walter Raleigh was brought up for judgment, Coke was Chief Justice, and, as such, it became his duty to pass sentence on the man against whom he had been

so intemperate an advocate. On this occasion, he appears to have been willing to make some amends for the violence and cruelty of his former conduct, and to wipe out some of the aspersions which he had cast on the character of the prisoner. He especially alluded to the imputation of irreligion, which he declared to be unfounded. The conclusion of Sir Edward Coke's judgment, in this case, is one of the best specimens which remain of his style of speaking.

"I know that you have been valiant and wise; I doubt not but you retain both those virtues, for now you shall have occasion to use them. Your faith hath heretofore been questioned; but I am resolved you are a good Christian, for your book, which is an admirable work, doth testify as much. I would give you counsel; but I know you can apply unto yourself far better than I am able to give you; yet will I, with the good neighbour in the Gospel, who finding one in the way wounded and distressed, poured oil into his wounds, and refreshed him, give unto you the oil of comfort, though in respect that I am a minister of the law, mixed with vinegar. Sorrow will not avail you in some kind; for were you pained, sorrow would not ease you; were you afflicted, sorrow would not relieve you; were you tormented, sorrow could not content you; and yet the sorrow for your sins, would be an everlasting comfort to you.

You must do as that valiant captain did, who, perceiving himself in danger, said, in defiance of death, 'Death, thou expectest me; but maugre thy spite, I expect thee.' Fear not death too much, nor fear not death too little; not too much, lest you fail in your hopes; not too little, lest you die presumptuously. And here I must conclude with my prayers to God for it, and that he would have mercy on your soul." And so the Lord Chief Justice ended with these words, "Execution is granted." (2 *How. State Trials,* 85.)

MODE OF RAISING A BENEVOLENCE.

In the twelfth part of Coke's Reports, (which was not published until after the author's death,) there are some remarks, under the title of "Exactions of Benevolence," which prove how much the writer was opposed to this illegal mode of levying taxes. He cites from Holinshed and Stow, an instance of an attempt made by Edward IV. to raise money in this manner: "The success and event of which was, that whereas the king called this a Benevolence to please the people, yet many of the people did much grudge at it, and called it a *Malevolence.*" In one case, indeed, he succeeded better.

"The king called before him at several times, a great number of the wealthiest of his subjects, to declare to them his necessity, and his purpose

to levy war for the honour and safety of the kingdom, and demanded of each of them a certain levie of money; and the king treated with them with such great grace and clemency, and with such gentle prayer, to assist him in his necessity, for the honour of the realm, that they very freely yielded to his request, for the honour and safety of the realm. Among the rest there was a widow of a very good estate, of whom the king merely asked what she would willingly give him, for the maintenance of his wars? 'By my faith,' quoth she, 'for your lovely countenance sake, you shall have twenty pounds,' which was more than the king expected. The king thanked her, and vouchsafed to kiss her; upon which she presently swore, he should have twenty pounds more." (12 *Report*, 119.)

MARRIAGE OF LORD KEEPER GUILFORD.

The matrimonial speculations of Sir Francis North, (Lord Keeper in the reign of Charles II.) are related in so amusing a manner by his brother, Roger North, that we shall be pardoned for inserting the whole narrative.

"After he was called to the bar, he applied himself closely to the attendance and operations of the law, and wanted refreshment, such as was reasonable to be enjoyed at vacant times; and he was weary of being at the loose hand as to com-

pany, which he could not have, at all times, to his mind. He was no clubster, listed among good fellows; and often passed his evenings in walking, or solitary, (if it may be so termed, when he had only me with him,) rather than join in any promiscuous society, or of such as were not either in his friendship, or distinguished by some notable talents that recommended them: and thought it would be an ease to his mind to know continually, after his business was done, what was to become of him; and that he thought best provided for by a family and house-keeping; which is never well settled without a mistress, as well as a master of a family. These considerations inclined him to look out for a suitable match. And, to say truth, his constitution required it as much as any man's whatever; but, being excessive modest, and by resolution virtuous, he was solicitous and ardent in the pursuit of it, and not a little encouraged by a manifest feeling he had of success in his profession, which dismissed all fears of the lean wolf. And not being insensible of a fair character in general, which, together with some quality and happy relation that fell to his share, he fancied he might pretend to as good a fortune in a match, as many others had found, who had less reason to expect it; but without some advancement in that way, he was not disposed to engage himself.

"That which sat hardest upon his spirits, was,

how he should give a fair answer to the question, *what jointure and settlement?* He used to own but one rood of ground in the world, that yielded him any profit, which was Westminster Hall: a meagre particular, unless he might have added, as Finch did, his bar-gown, 20,000l. There came to him a recommendation of a lady, who was an only daughter of an old usurer of Gray's Inn, supposed to be a good fortune in present, for her father was rich; but, after his death, to become worth nobody could tell what. His lordship got a sight of the lady, and did not dislike her; thereupon he made the old man a visit, and a proposal of himself to marry his daughter. There appeared no symptoms of discouragement; but only the old gentleman asked him what estate his father intended to settle upon him for present maintenance, jointure, and provision for children. This was an inauspicious question; for it was plain that the family had not estate enough for a lordship, and none would be to spare for him. Therefore he said to his worship, only, *That when he would be pleased to declare what portion he intended to give his daughter, he would write to his father, and make him acquainted with his answer.* And so they parted, and his lordship was glad of his escape, and resolved to give that affair a final discharge, and never to come near the terrible old fellow any more. His lordship had, at that time, a stout heart, and could

not digest the being so slighted; as if, in his present state, a profitable profession and future hopes, were of no account. If he had had a real estate to settle, he should not have stooped so low as to match with his daughter, and thenceforward despised his alliance.

"His lordship's next amour was, in all respects, better grounded; but, against all sense, reason, and obligation, proved unsuccessful. When Mr. Edward Palmer, his lordship's most intimate and dear friend died, he left a flourishing widow, and very rich. The Attorney General, and all his family, had projected a match of their cousin North with this lady, who were no strangers to each other; nor was there wanting sufficient advices, or rather importunities of the whole family, for her to accept him; against which she did not seem to reluct; but held herself very reserved. In the mean time his lordship was excited to make his application; which he had never done, or, at least, not persisted so long as he did, but out of respect and compliance with the sense of that worthy family, which continually encouraged him to proceed. Never was lady more closely besieged with wooers: she had no less than five younger brothers sat down before her at one time; and she held them in hand, as they say, giving no definitive answer to any one of them, till she cut the thread, and after a clancular proceeding, and

match with a jolly knight of a good estate, she dropped them all at once, and so did herself and them justice.

"There were many comical passages in this wooing, which his Lordship, without much pleasantry, used to remember, and, however fit for a stage, would not muster well in an historical relation; for which reason, as his lordship was dropped, I drop them. The unhappiness was, that he never could find out her resolution as to him; for she stood in some awe of Sir Jeoffry Palmer's family, and his Lordship would not slight their excessive kindness to him, by deserting his post at which they had placed him; so between the one and the other, he was held at the long saw above a month, doing his duty as well as he might; and that was but clumsily, for he neither dressed nor danced, when his rivals were adroit at both; and the lady used to shuffle her favours amongst them affectedly and on purpose to mortify his Lordship; and, at the same time, be as civil to him, with like purpose to mortify them: and his Lordship was not so mystified by his amour, as not to discern these arts; and nothing but the respects I hinted could have held him in harness so long. For it was very grievous to him that had his thoughts upon his client's concerns, which came in thick upon him, to be held in a course of bo-peep play with a crafty widow. And I have

heard him often say, that he never was, in all his life, more rejoiced, than when he was told madam was married; whereby he was escaped from a miserable confinement. And the fastidium, upon this occasion contracted, and his increase of business, which gave him little time to think of any thing else, diverted his mind from undertaking any more such projects; and so he went on his way.

"Another proposition came to his Lordship, by a city broker, from Sir John Lawrence, who had many daughters, and those reputed beauties; and the fortune was to be 6000l. His Lordship went and dined with the alderman, and liked the lady, who (as the way is) was dressed out for a muster. And coming to treat, the portion shrank to 5000l. And upon that, his Lordship parted, and was not gone far before Mr. Broker following, came to him and said, Sir John would give 500l. more, at the birth of the first child; but that would not do, for his Lordship hated such screwing. Not long after this dispatch, his Lordship was made the King's Solicitor-General, and then the broker came again, with news that Sir John would give 10,000l. No; his Lordship said, after such wages, he would not proceed, if he might have 20,000l. So ended that affair; and his Lordship's mind was once more settled in tranquillity.

"It is said that marriages are made in heaven;

and if frequent and unforeseen accidents (often observed to be productive of them,) are any argument, the proverb hath countenance; for so it happened in his Lordship's case; for out of a contingent interview, a proposition sprang, pregnant with all advantages of honour, person, and fortune; more than which was not to be desired or expected. And it was for a match with the lady Frances Pope, the middle daughter of three coheirs of Thomas, Earl of Down, who lived at Wroxton, in Oxfordshire. The eldest was married to Mr. Soams, of Thirlow in Suffolk, within four miles of Catlidge, the seat of his Lordship's father. And as the use is, the grave countess of Down, with her two younger daughters, attended the new-married couple to their habitation, and made some stay there; during which time the visits of joy came in, and amongst the rest, the family from Catlidge made their appearance; and the countess, and her daughters, in due time made their return, which happened to be at a time when his Lordship was at Catlidge. His mother laid her eyes on the eldest unmarried daughter, and when they were gone, turned about and said, 'Upon my life, this lady would make a good wife for my son Frank.' And, in short, at the next visit, with his Lordship's fair consent, she moved it to the countess, who consented that his Lordship might make his advances. His

next business was to muster what sums of money he could, in order to make an honourable proposition; and, with 600l. borrowed of a friend, he could compass but 6000l. in all to join her fortune, which was estimated at 14,000l. for making the jointure and settlement intended to be 1000l. per annum. After this he ventured down with a decent equipage and attendance; and, in less than a fortnight, fixed his point with the lady, and appointed another time to come and finish what was so auspiciously begun. And then his Lordship went with full attendance and some friends; and, after the necessary writings were sealed, the lovers were happily married in Wroxton church. But I well remember the good countess had some qualms, and complained that she knew not how she could justify what she had done, (meaning the marrying her daughter with no better settlements.) 'Madam,' said his Lordship, 'if you meet with any question about that, say that your daughter has 1000l. per annum jointure.' It is certain that (besides some private reasons the countess might have,) the friends of the family looked upon this as a very desirable match, not on account of an estate in present, but of much greater, little less than certain, to come; for his Lordship was Solicitor-General; and I may say, a favourite of the law, and his character unexcep-

tionable, besides his family, which was styled honourable.

"It is not easy, nor very material, to describe the feasting and jollities that were in the country round about, upon this occasion. It was a cavalier country, and the Popes eminent sufferers for their loyalty in the late wars: and his lordship having the like character, and known to be an obliging, as well as flourishing loyalist, there was scarce a family which did not shew all respect imaginable to the new-married folks, by visits, invitations, and festival rejoicings. So that it was about three weeks before his lordship could clear himself of these well-intended importunities. At length, we decamped for London, and his lordship took first, lodgings, and then a house, and lived consistent with his business, in a way most agreeable to him. It was wondered that his lady, being such a fortune, had no separate maintenance assigned her. I believe the true reason was, that, considering his lordship's known good-nature and honour, they thought there would be no need of it, and it would, as a distrust, have disobliged him to have mentioned it; and I am partly certain he would not have agreed to it: and, in the same family, the younger sister was matched with a large separate maintenance. And, to shew how little such provisions (except in extreme cases, the supposition of which, almost in possibility, is suffici-

ent to divert a match,) signify, a lady though suffering in her person for want of reasonable supplies, never profited the least by it; but, upon expostulation, the answer was, *Get you gone to your trustees.* But for certain, the Lady Frances Pope was matched into the land of plenty, and in saying that, I have said all." (*Life of Lord Guilford, vol.* i. *p.* 145.)

SIR EARDLEY WILMOT'S ESCAPE.

"In March, 1757," says the biographer of Sir Eardley Wilmot, "Sir Eardley had a most providential escape from being destroyed at Worcester, while sitting in court, and just beginning to sum up the evidence, by the fall of a stack of chimneys through the roof into court. His first clerk, Mr. John Lawes, was killed at his feet, and some other person also was killed, and several very dangerously hurt. Most of the counsel were gone, and those who remained got under the great table round which they had been sitting. Among the counsel present, were Mr. Aston, Mr. Nares, Mr. Ashhurst, Mr. Skinner, and Mr. Griffith Price, all of whom, it is remarkable, except Mr. Price, (who afterwards had a silk gown, and was eminent as a Chancery Counsel,) ascended the bench. The safety of the judge was owing, perhaps, to his presence of mind and resignation, in sitting still till the confusion was over. The following

is the account of the accident, given by Sir Eardley himself in a letter to his wife.

"*Worcester*, 15 *March*, 1757,
"*Four in the Afternoon.*

"I send this by express, on purpose to prevent your being frightened, in consequence of a most terrible accident at this place. Between two and three, as we were trying causes, a stack of chimneys blew from the top of that part of the hall where I was sitting, and beat the roof down upon us; but as I sat close up to the wall, I have escaped without the least hurt. When I saw it begin to yield and open, I despaired of my life, and the lives of all within the compass of the roof. Mr. John Lawes is killed, and the attorney in the cause which was trying is killed, and I am afraid some others: there were many wounded and bruised. It was the most frightful scene I ever beheld. I was just beginning to sum up the evidence in the cause which was trying to the jury, and intending to go immediately after I had finished, and most of the counsel were gone, and they who remained in court are very little hurt, though they seem to have been in the place of greatest danger. If I am thus miraculously preserved for any good purpose, I rejoice in the event, and both you and the little ones will have reason to join with me in returning God thanks for this signal deliverance; but if I have escaped

to lose either my honour or my virtue, I shall think, and you ought all to concur with me in thinking, that the escape is my greatest misfortune.

"I desire you will communicate this to my friends, lest the news of such a tragedy, which fame always magnifies, should affect them with fears for me.

"Two of the jurymen who were trying the cause were killed, and they are carrying dead and wounded bodies out of the ruins still. I will write to you again soon.

"JOHN EARDLEY WILMOT."

In another letter on the same occasion, Sir Eardley says: "It was an image of the last day, when there shall be no distinction of persons, for my robes did not make way for me. I believe an earthquake arose in the minds of most people, and there was an apprehension of the fall of the whole hall." (*Life of Sir E. Wilmot, p.* 20.)

THE ESTUIS OR BORDELLOES.

"The word estuis or stewes," says Lord Coke, "is French, we having no word for it; and the keeper, he or she, of such houses, is punishable by indictment, at the common law, by fine and imprisonment." He then proceeds to inform us, that Henry VIII., by proclamation under the great seal, suppressed all the stews which had long con-

tinued on the Bank-side in Southwark. "And those infamous women were not buried in Christian burial when they were dead, nor permitted to receive the rites of the church while they lived." "Before the reign of Henry VII. there were 18 of these infamous houses, and Henry VII. for a time forbade them, but afterwards 12 only were permitted, and had signs painted on their walls, as a Boare's Head, the Crosse Keys, the Gun, the Castle, the Crane, the Cardinall's Hat, the Bell, the Swan, &c." The selection of their abode by a number of these ladies in the following instance, presents a very suspicious appearance. "Many wicked and common women had seated themselves in a lane called Water Lane, next to the House of the Friars Carmelites in Fleet St. This being an open and known wickedness, King Edward III. to the end these Friars might perform their vows, one of which was to live in perpetual chastity, took order for removing of those women. The record saith, *Rex præcessit Majori Civitatis, London, quod amoveri faciat omnes mulieres meretrices in venellâ prope fratres Carmelitarum in Fleet-street inhabitantes.*" "And by the common law, it appertaineth to the Marshal of the King's house, to free, or protect the Court from *femes puteins*, which is more particularly explained by Fleta; who saith: Mareschalli interest virgatam a meretricibus omnibus protegere et deliberare, et habet Mareschallus ex consuetudine pro quali-

bet meretrici communi infra metas hospitii inventâ, 4d. primo die; quæ si iterum in ballivâ suâ inveniatur, capiatur et coram Seneshallo inhibeatur ei hospitium Regis Reginæ et liberorum suorum, ne iterum ingrediatur et nomina earum inebreviantur; quæ si iterum inventæ fuerint hospitium secutrices, tunc aut remaneant in prisonâ in vinculis, aut sponte prædicta hospitia abjurent; quæ si autem tertio inventæ fuerint, considerabitur quod amputentur eis tressoria et tondeantur, quæ quidem si quarto invenientur, tunc amputentur eis superlabia, ne de cætero concupiscant ad libidinem.'

"In R. 2, it is enacted that no estuis or brothel houses should be kept in Southwark, but in common places therefore appointed.

"So odious and so dangerous was this infamous vice, the fairest end whereof is beggary, that men in making leases of their houses, did add an express condition that the lessee, &c. should not suffer, harbour, or keep any feme puteine within the said houses, &c.

"See the case of Hen. VII. the custom of London for entering into a house and arresting of an Avowterer and carrying her to prison. In ancient times, adultery and fornication were punished with fine and imprisonment, and inquirable in Turnes and Leets by the name of Letturwhite." (*See Coke's 3d Institute*, 205, *and the case of the Marshalsea*, 10 *Rep.* 77.)

LORD KENYON'S CRITICISM.

Soon after Lord Kenyon was appointed Master of the Rolls, he was listening attentively to a young clerk, who was reading to him the conveyances of an estate, and on coming to the word *enough*, pronounced it *enow*. His Honour immediately interrupted him: "Hold, hold, you must stand corrected,—*e n o u g h* is, according to the vernacular custom, pronounced *enuff*, and so must all other English words, which terminate in *ough*, as, for example, *tough, rough, cough*, &c." The clerk bowed, blushed, and went on for some time, when coming to the word *plough*, he, with a loud voice, and a penetrating look at his Honour, called it *pluff!* The great lawyer stroked his chin, and with a smile candidly said, "Young man, I sit corrected."

Sir William Jones, Attorney General in the reign of Charles I., according to Roger North's account of him, agreed entirely with Lord Kenyon in his pronunciation. "He affected," says North, "somewhat of the rustic phrase of his own country, which was Gloucestershire, as to instance in a word, *althoff* instead of *although*, as we pronounce it, which was no disadvantage, but rather set him off."

SIR THOMAS MORE'S AUSTERITIES.

"The Lord Chancellor, albeit he was to God

and the world well known to be of notable virtue, though not so of every man considered, yet for the avoiding of singularity would he appear no otherwise than other men in his apparel, and other behaviour. And albeit he appeared outwardly honourable like one of his calling, yet inwardly he no such vanities esteeming, secretly next his body wore a shirt of hair, which my sister More, a young gentlewoman, in the summer, as he sate at supper, singly in his doublet and hose, wearing thereupon a plain shirt, without either ruff or collar, chancing to espy, began to laugh at it. My wife, not ignorant of his manner, perceiving the same, privily told him of it, and he being sorry that she saw it, presently amended it. He also sometimes used to punish his body with whips, the cords knotted, which was known only to my wife, his eldest daughter, whom for her secresy above all other he specially trusted, causing her, as need required, to wash the same shirt of hair." (*Roper's Life of Sir Thomas More, p.* 47.)

CIRCUMSTANTIAL EVIDENCE.—HARRIS'S CASE.

"Thomas Harris kept the Rising Sun, a public house, about eighteen miles from York, on the road to Newcastle. Harris had a man and maid servant: the man, whose name was Morgan, he kept in the threefold capacity of waiter, hostler, and gardener. James Gray, a blacksmith, travel-

ling on foot to Edinburgh, stopped at Harris's, supped, and lay there. Early in the morning, Morgan went secretly to a neighbouring magistrate, and gave information that his master, Harris, had just then murdered the traveller, James Gray, in his bed. A warrant was issued, and Harris was apprehended. Harris positively denied the charge, and Morgan as positively affirmed it; deposing, that he saw Harris at the stranger's bed, strangling him, but that he came too late to save him; and that Harris's plea was, the deceased was in a fit, and he was only assisting him. Morgan further deposed, that he instantly retired, and made a feint as if going down stairs, but creeping up very softly to an adjoining room, he there, through a key-hole, saw his master rifling the breeches of the deceased.

"Harris peremptorily denied every part of this story from the beginning to the end; and the body having, by order of the magistrate, been inspected, and no mark of violence appearing thereon, Harris was nearly on the point of being discharged, when the maid servant desired also to be sworn. She deposed that almost directly after her master came down in the morning, as she must conceive, from the traveller's room, she saw him go into the garden, (being unknown to her master in a back wash-house, which overlooked it,) saw him take some gold out of his pocket,

wrap it up in something, and bury it at the foot of a tree, in a private corner of the place.

"Harris turned pale at this information. He would give no direct answer as to the circumstances of the money. A constable was dispatched with the girl, and the cash to the amount of upwards of thirty pounds was found! The accused acknowledged the hiding of the money, but he acknowledged it with so many hesitations, and answered every question with such an unwillingness, such an apparent unopenness, that all doubts of his guilt was done away, and the magistrate committed him for trial. Harris was brought to the bar at the York Summer Assises, which happened about a week after his commitment, 1642. Morgan deposed the same as when before the justice. The maid servant and constable deposed to the circumstance of the money; the first, as to the prisoner's hiding, and both as to the finding it; and the magistrate gave testimony to the confusion and hesitation of Harris on the discovery of, and being questioned about, the hiding of the money.

"Harris, on his defence, endeavoured to invalidate the charge by assertions, that the whole of Morgan's evidence was false; that the money which he had buried was his own property, honestly come by, and buried there for his better security, and that his behaviour before the magis-

trate on this particular, arose from the shame of acknowledging his natural covetousness,—not from any consciousness of guilt. The Judge then summed up the evidence, remarking strongly on the *circumstance* of the hiding of the money, and the weakness of the prisoner's reasons for his so hiding of it; and the jury just consulting together for *two minutes*, brought in their verdict—*Guilty*.

"Harris was executed pursuant to his sentence, persevering in his declarations of innocence, but desiring all persons to guard against the effects of an avaricious disposition; for it was that sordidness of temper which had led him, he said, into general distrustfulness, and that into the expedient of hiding his money; which circumstance had alone furnished the means to his enemies, (for what reason they were, he said, he knew not, but whom he forgave,) for bringing him to an ignominious death.

"The truth of the fact at last came out: Harris was, indeed, entirely innocent! Morgan and the maid were not only fellow-servants but sweethearts. Harris's suspecting covetous temper was well-known to both, and the girl once, by accident, perceiving her master burying something, discovered the circumstance to Morgan; he, acting as gardener, took an opportunity when at work, to dig for it; it proved to be five guineas;

he left it, and informed the girl of it. They settled it not to touch the money, but to keep watching their master, as they had no doubt but he would add to it; and when it arose to a good sum, they agreed to plunder the hiding-place together, marry, and with the spoil, set up in some way of business. As they imagined, so it happened; they got several occasions to see the stock increasing, but (equally covetous with their master,) the golden harvest was not yet ripe.

"One day in a quarrel, Harris strikes his man, Morgan, several times. Morgan determines on revenge; at this fatal period arrives James Gray; Morgan finds him next morning dead in his bed, a diabolical thought strikes Morgan, of first charging Harris with the murdering and robbing of Gray, and then of plundering his master's hiding-place, whilst he, the master, should be in prison. Morgan communicates this intention to the maid; she approves of it; they consult, and fix upon the plan, and Morgan gives the information to the magistrate, as before related. The girl, unexpectedly, finds the accusation not sufficiently supported, and fearing that her sweetheart, of whom she is fond, will be punished for perjury if her master is released, who, indeed, unfortunately had just hinted as much before the justice, the expedient, in a moment, strikes her to sacrifice the hidden money, with her master, to the safety of

her paramour; and the idea, as the reader already knows, fatally succeeds. The whole of this stupendous piece of wickedness came to light in the beginning of the year 1643, on a quarrel between Morgan and the girl, who, after the death of Harris, had lived together as man and wife. They were taken up in consequence, and committed to prison; but escaped the public punishment due to their crime, by both of them dying of a jail disease.

"Harris's innocence became afterwards further illustrated, by its being found out, that James Gray, the supposed murdered person, had had two attacks of an apoplexy, some months previous to his death, and that he was never master of five pounds at one time in his life." (*Theory of Presumptive Proof.*)

OUTRAGEOUS ATTACK UPON LORD CHANCELLOR CLARENDON.

After Lord Clarendon's disgrace, he retired to France, where he was very coldly received by the government. During his journey to the waters of Bourbon, a most outrageous attempt was made upon his life, which he has related in the following words:—

"There happened to be at that time quartered there a foot company of English seamen, who had been raised and were entertained to serve the

French in attending upon their artillery, some of them being gunners; and none of them had the language, but were attended by a Dutch conductor, who spake ill English, for their interpreter. Their behaviour there was so rude and barbarous, in being always drunk, and quarrelling and fighting with the townsmen, who would not give them any thing they demanded, that the city had sent to the court their complaints, and expected orders that night for their remove. They quickly heard of the chancellor's being come to the town, and calling their company together, declared, 'That there were many months' pay due to them in England, and that they would make him pay it before he got out of the town.'

"He was scarce got into his ill ground lodging when many of them flocked about the house upon which the gates of the inn were shut, they making a great noise, and swearing they would speak with the chancellor, and being about the number of fifty, they threatened to break open the gate, or pull down the house. The mutiny was notorious to all the street; but they had not courage to appear against them. The magistrates were sent to, but there was a difference between them upon the point of jurisdiction, this uproar being in the suburbs. In short, they broke open the door of the inn: and when they were entered into the court, they quickly found which was the chan-

cellor's chamber; and the door being barricadoed with such things as were in the room, they first discharged their pistols into the window, with which they hurt some of the servants, and Monsieur Le Feude, who with his sword kept them from entering in at the window with great courage, until he was shot with a brace of bullets in the head, with which he fell: and then, another of the servants being hurt, they entered in at the window, and opened the door for the rest of their company, which quickly filled the chamber.

"The Chancellor was in his gown, sitting up on the bed, being not able to stand, upon which they all came with their swords drawn: and one of them gave him a blow with a great broad-sword upon the head, which, if it had fallen upon the edge, must have cleft his head; but it turned in his hand, and so struck him with the flat, with which he fell backwards on the bed. They gave him many ill words, calling him 'Traitor,' and swore, 'Before he should get out of their hands, he should lay down all their arrears of pay.' They differed amongst themselves what they should do with him, some crying 'That they would kill him,' others, 'That they would carry him into England:' some had their hands in his pockets, and pillaged him of his money and some other things of value; others broke open his trunks and plundered his goods. When himself

recovered out of the trance in which he was stunned by the blow, they took him by the hand who spake of carrying him to England, and told him 'it was the wisest thing they could do to carry him thither, where they would be well rewarded:' another swore, 'that they should be better rewarded for killing him there.' And in this confusion, the room being full and all speaking together, the fellow who had given him the blow, whose name was Howard, a very lusty strong man, took him by the hand, and swore, 'that they should hurt one another if they killed him there; and therefore they would take him into the court, and dispatch him where there was most room.' And therefore others laid their hands upon him and pulled him to the ground, and then dragged him into the court, being in the same instant ready to run their swords into him together: when, in the moment, their Ensign, and some of the magistrates with a guard, came into the court, the gate being broken; and so he was rescued out of their bloody hands, and carried back to his chamber.

"Howard and many of the others, some whereof had been hurt with swords as they entered at the window, were taken and carried to prison, and the rest dispersed, vowing revenge when they should get the rest of the company together: and it cannot be expressed with how much fear the

magistrates and the poor guard that attended them, apprehended their coming upon them together again.

"The Chancellor himself had the hurt before mentioned in his head, which was a contusion, and already swollen to a great bigness; Monsieur Le Fonde was shot in the head with a brace of bullets, and bled much, but seemed not to think himself in danger; two of the Chancellor's servants were hurt with swords, and lost much blood. So that they all desired to be in some secure place, that physicians and surgeons might visit them. And by this time many persons of quality of the town, both men and women, filled the little chamber, bitterly inveighing against the villainy of the attempt, but renewing the dispute of their jurisdiction. And the Provost, who out of the city was the greater officer, would provide an accommodation for them in his own house in the city, and appoint a guard for them; which the magistrates of the city would not consent to, nor he to the expedient proposed by them. And this dispute, with animosity and very ill words, continued in the chamber till twelve of the clock at night; the hurt persons being in the mean time without any remedy or ease: so that the magistrates, though they were not so dangerous, were as troublesome as the seamen, against whom they were not yet secure from a second attempt.

"In the end, Monsieur le Fonde was forced to raise his voice louder than was agreeable to the state he was in, to threaten to complain of them to the King, for their neglect before and after the mischief was done; by which they were much moved, and presently sent to the governor of the duke of Bouillon's Castle, (which is a good and noble house in the town,) 'That he would receive the Chancellor and Monsieur Le Fonde, with such servants as were necessary for their attendance;' which he did with great courtesy, and gave them such accommodation as in an unfurnished house could on the sudden be expected. And so physicians and surgeons visited their wounds, and applied such remedies as were necessary, till upon some repose they might make a better judgment.

"The same night there were expresses dispatched to the court to give advertisement of the outrage; and to Roan, to inform the intendant in whose province it was committed: and he, the next day, with a good guard of horse, arrived at Eureux. After he had visited the Chancellor, with the just sense of the insolence he had undergone, and of the indignity that the King and his government had sustained, he proceeded in the Court of Justice to examine the whole proceedings, and much blamed the magistrates on all sides for their negligence and remissness. Upon the whole examination, there appeared no cause

to believe that there was any formed design in which any others had concurred, than they who appeared in the execution, who defended themselves by being drunk, which did not appear in any other thing than in the barbarity of the action. Yet it was confessed, that upon their first arrival at Dieppe, and whilst they were quartered there, the Chancellor then passing by, between Roan and Calais, they had a resolution to have robbed or killed him, if they had not been prevented by his getting the gates opened, and so going away before the usual hour." (*Clarendon's Life, v.* 3. *p.* 896.)

ON THE USE OF TORTURE IN JUDICIAL PROCEEDINGS.

"Fuller informs us, that one Hawkins suffered this punishment in the reign of Henry the VIth, in order to extort evidence from him; and Sir Edward Coke, in the case of Lady Shrewsbury, says, that "the nobility of England are not subject to torture in *crimine læsæ majestatis;*" which seems to admit, that in other crimes they were liable to it; or otherwise, affords a strong inference, that persons of a lower rank might, in treason, be subject to this sentence. King James, in his works, mentions, that the rack was *shewn* to Guy Fawkes, during his examination; and yet this attempt of procuring evidence is not taken

notice of by any historian or lawyer of the times; though every circumstance relative to the powder-plot must have been publicly known. Upon the murder of the Duke of Buckingham by Felton, the judges were asked, whether he could be tortured in order to extort a confession? They answered, indeed, to their honour, in the negative; but their being thus consulted, shews that, in the apprehension of the king's counsellors, they might have inflicted this punishment. It is not pretended by this, that the instances were frequent; and fortunately this most horrid practice hath been discontinued, so that there cannot be the least legal pretence ever to revive it. Torture, indeed, by no means prevails so universally in the other countries of Europe as is generally apprehended; there are express laws against it both in Navarre and Biscay, though in Biscay it hath of late been permitted in treason and heresy. There are also many regulations by the ordinances of the state of Lucca, to prevent its ever being inflicted a second time, but upon fresh as well as stronger proofs; and if the executioner introduces any new severity during the examination of the criminal, he is punished with death. It is used in China, and in most parts of Asia: the act of union hath forbidden it in Scotland."

"There is a parenthesis of some ambiguity likewise thrown into this preamble, which relates to

the confession of the criminal, required by the civil law, ("which they will never do without torture or pains.") I will not dwell, however, upon the true meaning or construction of this recita; but shall only observe, that the practice of torturing criminals is not spoken of with any great abhorrence by the legislature; nay, it seems to be recited as allowed to have been practised in this country, in all offences tried before the admiral. I have, in my observations on the Statute of Westminster the first, endeavoured to prove, that torture, though not frequently used, was not absolutely unknown in England, since which some additional proofs have occurred.

"Oldmixon, in his history, asserts, that a confession was thus extorted from one Simpson, in 1558. Sir Walter Raleigh also at his trial mentions, that Kemish was threatened with the rack, and that the keeper of this horrid instrument was sent for, which seems to prove, beyond all doubt, that this mode of punishment had been occasionally used, otherwise there would not have been a regular officer who had the custody of it. Torture still continues to be used in most countries in Europe, and among the rest, in France, though honest Montaigne hath written with great warmth against it. Montesquieu hath likewise a short chapter, by which he would seem to condemn it; but it is the most fantastical in his whole work of

the Esprit des Loix; the very great abilities and learning, which appear in almost every other part of it, entitle him, however, to not only these, but greater liberties with his readers.

"The present King of Prussia hath, to his honour, abolished it in his dominions: 'La question se donne en Allemagne aux malfaiteurs après qu'ils sont convaincus, afin d'arracher de leur propre bouche l'aveu de leurs crimes: elle se donne en France pour avérer le fait ou pour découvrir les complices; il y a huit ans que la question est abolie en Prusse.'

"The Marquis Beccaria, who seems to have adopted most of Montesquieu's ideas, makes use of the following argument against the use of torture: 'The person suffering this agony, either confesses, or not; if he is guilty, and does not acknowledge his crime, he is acquitted, when he deserves death: if the accused is innocent, he hath been tortured, when the putting him upon his trial was more than sufficient punishment.'

"He likewise observes, that those states of Europe who permit torture in the cause of civil justice, never allow it to be made use of in their camps, where the martial law takes place.

"Ammianus Marcellinus informs us, that the Egyptians shewed remarkable firmness, whilst under the most excruciating pain to extort a discovery from them. Apud eos (Egyptos,) erubescit,

si quis non infitiando tributa plurimas in corpore vibices ostendat; et nulla tormentorum vis inveniri adhuc potuit, quæ obdurato illius tractûs latroni elicere potuit, ut nomen proprium dicat."

To the foregoing collections, extracted from Barrington's Observations on the Ancient Statutes, a writer in the Retrospective Review has added the following remarks.

"This curious subject had engaged the attention of the late Sir Samuel Romilly, whose benevolent mind was always alive to enquiries in which the interests and happiness of his fellow-creatures were involved. At his death some MS. collections on the use of torture in England were found amongst his papers, and were communicated to Miss Aikin, who has made a judicious use of them in her Memoirs of the Court of King James the First. The authorities thus collected form an admirable Supplement to the Observations of Mr. Barrington, on which account we have thought it proper to insert them in the present article, together with such few illustrations as have casually occurred to ourselves. The whole will thus form a more complete collection of facts than can, perhaps, be met with elsewhere.

"One of the first instances in which a question arose as to the use of torture in judicial cases in this country, was on occasion of the proceedings

against the Knights Templars. In a former volume we gave some account of the torments to which these unfortunate men were subjected in other parts of Europe. In England, the Archbishop of York, during the examinations taken by him against the supposed offenders, was desirous of applying the rack; but suggested to several monasteries and divines the doubts he entertained, whether he could have recourse to it, seeing, that in this realm of England it had never been seen or heard of. He further desired their opinion, whether, if torture should be applied, it should be done with priests or laymen; and whether, if no person could be found in England to do the office, he might *send for expert torturers from foreign parts?* (*Walter Hemingford, p.* 256.) It may be added, that the Archbishop was afterwards convinced of the innocence of the Templars, and directed many of the Knights to be supported at his own expense." (*Dugd. Monas.* i. 184.)

"The trial by rack," says Blackstone, (4 *Comm.* 326,) "is utterly unknown to the laws of England, though once, when the dukes of Exeter and Suffolk, and other ministers of Henry VI. had laid a design to introduce the civil law into this kingdom as the rule of government, for the beginning thereof they erected a rack of torture, which was called in derision, the duke of Exeter's daughter, and still remains in the Tower of Lon-

don." In the reign of Edward IV. however, an instance occurs of the judicial employment of the rack. Sir Thomas Cooke, who had been Lord Mayor of London, was arraigned of treason for lending money to Queen Margaret, and a witness was produced against him, who had been examined on the rack. (*Fuller's Worthies, p.* 317.) In the reign of Henry VIII. this instrument of torture was applied to spiritual purposes, and that too upon the person of an unfortunate woman. At the instigation of the respective Chancellors Rich and Wriothesley, Anne Ascough, who was accused of heresy, was racked repeatedly, after her condemnation, for the purpose of extracting evidence against some other court ladies of the same opinions.

"In the reign of Elizabeth, to the eternal disgrace of that Queen, the rack became an active instrument of torture, and was employed chiefly against the Catholics. The commissioners for inquiring into treason, and the members of the high commission court, appear to have applied it at their will and pleasure; and a pamphlet was written under the eye of Burleigh, entitled, 'A Declaration of the favourable dealings of Her Majesty's Commissioners,' in extenuation of the practice. On the trial of the Babbington conspirators, Sir Christopher Hatton, one of the Commissioners, put the following question to one of the prisoners:

'I must ask thee one question—was not all this willingly confessed by thyself without menacing, without torture, and without fear of any torture?' (*Howell's State Trials, v.* i. *p.* 1131.) So Sir Edward Coke, on the trial of lords Essex and Southampton, says, 'Though I cannot speak without reverend commendation of her Majesty's most honourable justice, yet I think her overmuch clemency to some turneth to overmuch cruelty for herself, for though the rebellious attempts were so exceedingly heinous, yet out of her princely mercy, no man was racked, tortured, or pressed to speak anything further than of their own accord and willing minds, for the discharge of their consciences.' (*State Trials, v.* i. *pp.* 1338, 1348.) In another place, Sir Edward Coke enumerates, among the privileges of peers, that they are not to be tortured. 'For the honor and reverence which the law gives to nobility, their bodies are not subject to torture *in causâ criminis læsæ majestatis.* (12 *Rep.* 96.) In the third Institute, however, he declares that all torture of accused persons is contrary to law (p. 35.), and in his second Institute, he observes, that Magna Charta prohibits torture by the words, *nullus liber homo aliquo modo destruatur,* (p. 48.)

"The use of torture was resorted to occasionally in the reign of James I., if we may trust the authority of Selden. 'The rack is used nowhere

as in England: in other countries it is used in judicature, where there is a semiplena probatio, a half-proof against a man, then to see if they can make it full, they rack him if he will not confess; but here in England they take a man, I do not know why, but when somebody bids.' On the trial of Sir Walter Raleigh, which took place in the first year of James's reign, Sir Walter asserted that Keymis, his captain, 'was offered the rack to make him confess.' Lord H. Howard replied, that Keymis 'was never on the rack;' and the Commissioners protested before God, that 'there was no such matter intended, to their knowledge.' However, on Raleigh's inquiring whether the keeper of the rack had not been sent for, Sir William Wade, one of the Commissioners, admitted, that when the Solicitor and himself examined Keymis, they told him he deserved the rack, but did not threaten him with it. It should appear from Raleigh's question, that there existed at this time an officer, whose duty it was to employ the instrument of torture. (2 *State Trials*, 22.)

"On the trial of Garnet, the Jesuit, for the Gunpowder Plot, Lord Salisbury asserted that nothing had been drawn from him by 'racking or any such bitter torments; a matter ordinary,' he said, 'in other kingdoms, but now forborne here.' However, in an account published by authority, it

is expressly stated that Guy Fawkes came to his trial weakened by the effects of the rack; and Owen, Garnet's servant, who was reported to have died in prison, is said to have expired under the torture. (*Memoirs of the Court of James, vol.* i. *p.* 260.) Oldcorn, the Jesuit, also is said to have been five several times racked in the Tower, and once with the utmost severity for several hours. (*Butler's Memoirs of English Catholics*, ii. 260.)

"It is a singular fact, that so late as the reign of Charles II. a writer should be found in this country openly to defend the use of torture in judicial proceedings. It is a tract entitled, 'The Law of all Laws, or the Excellency of the Civil Law above all human Laws whatsoever, by Sir Robert Wiseman, Knight, Doctor of the Civil Laws, 1664.' The writer enters into an elaborate examination of the subject, and argues it in a manner which, if we were not indignant at its atrocious spirit, would amuse us with its folly. 'Neither does it derogate,' says Sir Robert, 'from the clemency of the civil law, that it seems to deal so sharply with those, against whom there are grounds enough to suspect them of some enormous crimes, whereof they are accused, but not evidence enough to condemn them, as to allow such persons to be set upon the rack, thereby to manifest their innocence by an obstinate denial, or to discover their guilt by a plain

confession.—To bring men to the rack in such cases, for trial's sake, is not to be censured for cruelty. *Non ex sævitiâ sed ex bonitate talia faciunt homines*: such things are done by men, not out of cruelty, but goodness.' It is curious to find the advocates for the rack, the pulley, and the wheel, using precisely the same arguments which some of the supporters of the whip and tread-mill employ at the present day. 'Sane hic juris rigor,' says Mestertius, '(si aliquis sit) utilitate publicâ compensatur;' 'for by the terror thereof,' adds Sir Robert Wiseman,' it is free from the machinations of wicked and lewd men.' 'These were the cautions,' adds the same writer, after examining the practice of torture by the civil law, 'which the Roman state did prescribe to be used in this sharp, but as their policy stood, (who did not love upon a slender proof to take away the lives of their people,) very necessary course of trial by torture, which peaceable and just men could not be offended with, because it was to defend and secure them from the rage and rapine of vile men, and if evil men did groan under that severity, they had their desert and might thank themselves.' 'When a man,' says a modern Wiseman, 'has been proved to have committed a crime, it is expedient that society should make use of that man for the diminution of crime: he belongs to them for that purpose; and the degree

of severity to be employed is only restrained to that which will not excite compassion for the sufferer and lessen the horror of the crime.' So that in a community where the feelings of the people are sufficiently blunted to endure without sympathy, the spectacle of the rack, it may be highly 'expedient that society should make use of that instrument for the diminution of crime:'—'Sane hic rigor utilitate publicâ compensatur.'"

To the preceding notices we may add the observations of Sir Thomas Smith, (who lived in the reign of Elizabeth,) relative to the application of torture in this kingdom. In the 27th chapter of his Commonwealth of England, he says: "Heading, tormenting, dismembering, either arm or leg, breaking upon the wheel, impaling, and such cruel torments, as be used in other nations by the order of the law, we have not; and yet as few murders committed as anywhere, nor is it in the Judge's power to aggravate or mitigate the punishment of the law, but in *the Prince's only*, and his Privy Council, which is marvellously seldom done." Sir Thomas here appears to recognize the dangerous prerogative of aggravating the punishment of the law, a prerogative altogether inconsistent with a free government. A little afterwards he observes: "Likewise torment or question, which is used by the order of the Civil

Law, and custom of the countries, to put a malefactor to excessive pain, to make him confess of himself, or of his fellows or accomplices, it is not used in England; it is taken for servile."

THE TEMPLE CHURCH.

The Temple Church, which belongs in common to the two societies of the Inner and Middle Temple, was founded by the Knights Templars in the reign of Henry II. upon the model of the Church of the Holy Sepulchre, and was consecrated in 1185, by Heraclius, Patriarch of Jerusalem, who was at that time on a visit to England for the purpose of raising contributions in support of the Crusades. This was not the first church founded by the Knights Templars in England, their original seat being near the entrance into Chancery Lane from Holborn, where in 1595, the ruins of an old church, built in a circular form, (the usual form in which the Templars built all their churches,) were discovered. (*Stowe's Survey*, 824. *Dugd. Orig.* 144.) The following is the description of the Temple Church, given in Herbert's History of the Inns of Court, (p. 259.)

"This is a very beautiful specimen of the early Gothic architecture. It has three aisles running east and west, and two cross aisles. The windows are *lancet-shaped*, very antique, and the western entrance, which answers to the nave in

other churches, is a spacious round tower, in imitation of the Church of the Holy Sepulchre, (a peculiarity which distinguishes all the churches of the Knights Templars.) This is separated from the choir, not by close walls, but by a handsome screen, which, however, has the effect of obstructing the sight. It is supported by six pointed arches, each resting on four round pillars, bound together by a *faccia*. Above each arch is a window with a rounded top, with a gallery and rich Saxon arches intersecting each other. Without outside of the pillars is a considerable space preserving the circular form. On the lower part of the wall are small pilasters meeting in pointed arches at the top, and over each pillar a grotesque head.

"The choir is a large building of the square form, evidently erected at another time; the roof is supported by slight pillars, of what is generally called *Sussex* marble, and the windows on each side, which are three in number, are adorned with small pillars of the same. On the outside is a buttress between each. The entire floor is of flags of black and white marble. The length of the choir is 83 feet, the breadth 60, and the height 34; it is unencumbered with galleries. The height of the inside of the tower is 48 feet in diameter, on the floor 51, and the circumference 160.

"The pillars of this tower, (6 in number,) are wainscoted with oak to the height of eight feet, and some have monuments placed against them, which injures the uniformity of the plan. It is singular that the small pillars, and the heads, which ornament them, are not of stone, but a composition resembling coarse mortar, which is very rotten, and from neglect and damp, threatens (unless repaired,) a very speedy demolition."

The best description of the monuments in the Temple Church is contained in Pennant's History of London, and is now extracted.

"On the floor of the round church are two groups of knights. In the first are four, each of them cross-legged, three of them in complete mail, in plain helmets, flattened at top, and with very long shields. One is known to have been Geoffrey de Magnaville, created Earl of Essex in 1148. His end was singular, for being driven to despair by the injustice of his monarch, King Stephen, he gave loose to every act of violence. He was mortally wounded in an attack upon Burwell Castle, in Cambridgeshire, and, being found by some Templars, was dressed by them in the habit of the order, and carried from the spot. As he died excommunicated, they wrapped his body in lead, and hung it on a crooked tree in the Temple orchard. On being absolved by the Pope, (it being proved, that he expressed great penitence in

his last moments,) he was taken down, and buried, first in the cemetery, and afterwards in the place where we find this memorial of him."—(*Gough's Monuments*, i. 24. *tab.* v.)

"One of these figures is singular, being bareheaded and bald, his legs armed, his hands mailed, his mantle long, round his neck a cowl, as if, according to a common superstition in early days, he had desired to be buried in the dress of a monk, lest the evil spirit should take possession of his body; on his shield are three *fleurs de lis*.

"In this group is a stone coffin of a ridged shape, conjectured to have been the tomb of William Plantagenet, fifth son of Henry III.

"In the second group, are other figures, but none of them cross-legged, except the outermost; all of them are armed in mail; the helmets much resemble the former; but few are mailed. One figure is in a spirited attitude, drawing a broad dagger; one leg rests on the tail of a cockatrice, the other is in the action of being drawn up with the head of a monster beneath. None of the eight figures, except that of Geoffrey de Magnaville are ascertained; but Camden conjectures, that three are intended to commemorate William, Earl of Pembroke, who died in 1219, and his sons, William and Gilbert, likewise Earls of Pembroke, and Marshals of England. In the first group, one of the figures bears a lion upon

his shield, the arms of that great family. Gilbert was brought up to the church, and, notwithstanding he was totally unskilled in the exercises of chivalry, would enter into the gallant lists; but mounting a fiery courser was run away with, flung, and killed, at a tournament at Ware, 1242.

"The being represented cross-legged is not always a proof of the deceased having had the merit, either of having been a crusader, or having made a pilgrimage to the Holy Sepulchre. I have seen at Mitton, in Yorkshire, two figures of the Sherbornes thus represented: one died in 1629, the other in 1689, who, I verily believe, could never have had any more than a wish to enter the holy land.

"To these ancient monuments may be added, that of a bishop, in his episcopal dress, a mitre and crosier, well executed in stone."

The opinion expressed by Mr. Pennant, that the being represented cross-legged is not a proof of the deceased having been a crusader, can scarcely be conceded as borne out by the proofs which he adduces of two monuments erected in the *seventeenth* century, where the same position is observed. The authority of Stowe, Camden, and other antiquaries, is against Mr. Pennant.

The church likewise contains several more modern monuments, amongst the most remarkable of which are those of the celebrated John Selden,

who died in 1654, of his friend, Sir John Vaughan, Lord Chief Justice of the Common Pleas, in the reign of Charles I., and author of the Reports which pass under his name, and of Plowden.

The superior clergyman of the Temple Church, is called the Master, a title which was known in the time of the Knights Templars, in whose histories we read of ὁ μαιςρος τȣ τεμπλȣ. He is appointed by the King's Letters Patent, without institution or induction; there is besides a reader and lecturer. "In Stowe's time it had four stipendiary priests, with a clerk, who had stipends allowed them out of the possessions of the destroyed monastery of St. John of Jerusalem. But the establishment was still greater in the Romish times, when the several priests had a hall and lodging assigned them within the house, as appears by testimonials in the reign of Henry VII. The charges of the present church are jointly paid by both societies, who have each their side at divine worship." (*Herbert's Inns of Court*, 262.)

Some mean buildings, which hid a part of this venerable structure, have been lately pulled down.

THE LATE GEORGE HARDINGE.

The name of Mr. Hardinge is fast fading away from the recollection of the public. The following pleasing little notice of him has been pre-

served by Miss Hawkins, in her Memoirs, (*vol.* i. *p.* 361.)

"Of George Hardinge something may be said. That he was a man of most brilliant talents, those who were at all acquainted with him must confess, but it is scarcely possible to conceive talents less adapted to legal pursuits than his. His conversation, and, in many instances, his speeches at the bar, were replete with wit and merriment. By the concurrence of fortunate circumstances, which no man, even with the greatest pretension, can command, and scarcely ever happen to any one, he found himself, more than once, at the very head of his profession, with profit and honours thrust upon him; but the vivacity of his temper, habits, and appearance, would not permit him to avail himself of the proferred good, and others more sedulous, were permitted to supplant him, contented to represent himself in the court where he was acting as counsel, as 'a very idle fellow,' and to verify the assertion by a professional life of the grossest negligence. It was, to all who observed it, a matter of deep regret, to see talents thus lost, for Lord Camden, a near relation of Mr. H.'s, is reported to have confessed, that his talents were far superior to his own, and that, if he had had steadiness, every thing was in his power; but neither what he owed to his own reputation or interest, nor all his classical remi-

niscences, could teach him, that the siren, sloth, was to be shunned; and at last he closed his reckless life in very *confined* circumstances.

"The lady to whom I owe Mrs. Piozzi's anticipated review, possessed very early, and allows me to print, the following improviso of Mr. Hardinge, written, it may very truly be said, on the spur of the occasion. It needs a few words of introduction. I give those which were given me.

"Messrs. Triphook and Company having directed a letter 'To George Hardinge, Esq. if living: if dead, to his Executors,' beginning, 'Sir, or Gentlemen,' and stating, that not having heard from Mr. Hardinge, after repeated applications for settling an enclosed account, they concluded he must be dead; and if that melancholy circumstance was true, requesting that it might be settled by his executors. Mr. Hardinge immediately wrote:—

"Oh! Messieurs Triphook, what is fear'd by you,
The melancholy circumstance is true;
For I am dead; and, more afflicting still!
My legal assets will not pay your bill.
For oh! to name it I am broken-hearted,
My mortal life, insolvent I departed;
So, gentlemen, I'm yours, without a farthing,
For my Executors and Self,

GEORGE HARDINGE.

P.S. Excuse the postage which these lines will cost,
The dead their franking privilege have lost."

MR. JUSTICE CATLINE.

"Mr. Bromley, Solicitor, giving in evidence for a deed, which was impeached to be fraudulent, was urged by the Counsel on the other side with this presumption, 'That in two former suits when title was made, that deed was passed over in silence, and some other conveyance stood upon.' Mr. Justice Catline taking in with that side, asked the Solicitor, 'I pray thee, Mr. Solicitor, let me ask you a familiar question:—I have two geldings in my stable; I have divers times business of importance, and still I send forth one of my geldings and not the other; would you not think I set him aside for a jade?' 'No, my lord,' said Bromley, 'I would think you spared him for your own saddle.'" (*Bacon's Apothegms.*)

DELIBERATIONS OF JURIES.

The rule of law which compels a jury to be unanimous, however various their opinions may originally be, has doubtless given rise to many singular scenes. On the trial of the seven Bishops, in the reign of James II., the jury withdrew and remained in deliberation the whole of the night, owing, as it is supposed, to the obstinacy of one Arnold, the King's brewer. (*See*

Macpherson's State Papers, vol. i. *p.* 265.) In the following letter an account of the conduct of this Jury is given.

"*John Ince to the Archbishop of Canterbury.*

"*June* 30, 1688.

"MAY IT PLEASE YOUR GRACE,

"We have watched the Jury carefully all night, attending without the door, on the stairhead. They have, by order, been kept all night without fire and candle, save only some basins of water and towels this morning about four. The officers, and our own servants and others hired by us to watch the officers, have, and shall constantly attend, but must be supplied with fresh men to relieve our guard if need be.

"I am informed by my servant and Mr. Grange's, that about midnight *they were very loud one with another,* and that the like happened about three in the morning, which makes me conclude that they are not yet agreed. They beg for *a candle to light their pipes,* but are denied.

"In case a verdict pass for us, which God grant in his own good time, the present considerations will be *how the Jury shall be treated.* The course is usually each man so many guineas, and a common dinner for them all. The quantum is at your Grace's and my Lord's desire. But it seems to my poor understanding, that the dinner might be spared, lest our watchful enemies should inter-

pret it against us. It may be ordered thus, each man guineas for his trouble, and each man a guinea over for his own desire.

"My Lord,

"Your Grace's most humble Serv.

"JOHN INCE.

"N. B. There must be 200 guineas provided."

(*See Macpherson's State Papers, vol.* i. *p.* 154.)

By way of appendix to the above, we may add a very entertaining account of the deliberations of a Jury in a late case. The action was brought by Mr. Bodkin, Honorary Secretary to the Mendicity Society, against the Times Newspaper.

"Immediately after the Jury were shut up in the Bail Court, the tendency of the alleged libel was warmly discussed. The special jurymen used great abundance of language, if not of argument, for the purpose of convincing Mr. Sawyer that it was a false, malicious, and injurious publication. That gentleman manfully defended his opinion against all their objections; alleging, that he thought the remarks made upon Mr. Bodkin's conduct to be such as the occasion required, and such as he himself should have written, had he possessed the necessary talent. Several speeches were made upon the subject, which produced no effect except it were that of making the speakers more obstinately attached to the side they advocated. A Mr. Cooke, who was a talesman, was a

silent, but not an ineffectual assistant to Mr. Sawyer, in the vast fire of words which his brother jurymen opened upon him. He agreed with Mr. Sawyer, that the paragraphs complained of, formed no libel; and declared that he could not consent to give a verdict which should declare them to be such. Both gentlemen requested their opponents to give them a definition of what was and what was not a libel; and were answered with the usual remarks, that every thing is a libel which tends to bring a man's character into contempt. They were also treated with a dissertation upon the necessity of restraining the licentiousness of the press, which one gentleman recommended as the best means of preserving its liberty. Another told them, that though the press had been styled the palladium of British freedom, he could not consider it as such, when he saw it making attacks like the present upon the character of private individuals. A third declared, that the malice of the article of which Mr. Bodkin complained was so great, that he would consent to nothing less than a verdict which gave him 300*l.* damages. Mr. Sawyer and Mr. Cooke called upon them to point out the malice which was said to be so evident in the alleged libel, asserting that they would have no objection to give a verdict for the plaintiff, if they could be satisfied upon that point. The libel was in consequence read over

paragraph by paragraph, several gentlemen commenting upon it as they went along. Still the two Jurymen remained unconvinced. Under these circumstances, the Jury came into Court about seven o'clock, and the conversation then took place between Mr. Justice Littledale and Mr. Sawyer, which was reported in our paper of Saturday. The result of it was, that Mr. Sawyer and Mr. Cooke, in consequence of the doctrine laid down by Mr. Justice Littledale respecting constructive malice, gave up their intention of finding a verdict for the defendant, and agreed to join their brethren in a verdict for the plaintiff. They then left the box to consider of the damages which they should give the plaintiff for his loss of character. A question then arose as to damages. The two jurors who had reluctantly consented to find a verdict for the plaintiff, said that nothing should induce them to give more than nominal damages; and not knowing that in an action for a libel, a farthing's damages will carry costs, if the Judge does not certify, declared their intention of submitting to starvation before they gave Mr. Bodkin more than his costs of suit. This declaration was not likely to excite much satisfaction in the minds of any of the jurors, and some of the special jurors, we are informed, evinced great displeasure at it. Their usual hour of dinner had arrived, and the sherry and sandwiches which

Mr. Justice Littledale had permitted to be sent in to Mr. Robertson and Mr. Horton, on account of their advanced age, tending only to excite the appetite of their brother jurors, Mr. Godsall, who, we understand, was engaged to dine with his father-in-law, the Lord Chief Justice of the Common Pleas, seemed particularly to regret the loss of his dinner. He tried first by pompous language, then by argument, then by persuasion, then by entreaty, and in the course of the night, by violence, to induce Mr. Sawyer to concur with his brother jurors. Mr. Sawyer, however, was inflexible, and told Mr. Godsall, that even if he were so base as to neglect his oath for the sake of his appetite, there would still be the integrity of Mr. Cooke to overcome—a gentleman who, though he said little, was not the less determined to maintain the opinion he had formed upon the present case. Mr. Godsall appeared to think but lightly of Mr. Cooke's opposition, saying that he had no doubt that Mr. Cooke would yield, if Mr. Sawyer would set him the example. Mr. Godsall then held out other inducements to Mr. Sawyer, which were, however, as unavailing as his prayers, his entreaties, and his subsequent violence. In the midst of these discussions, time wore away, perhaps neither pleasantly nor rapidly to the gentlemen engaged in them. About half-past eight o'clock several jurymen wrote to their families

stating that they must not expect them that night; and their notes were dispatched by the officer of the Court. As it had now become evident to both parties that they could not convince the other, the matter ceased to be one of argument, and became one of starvation. At this stage of the proceeding, the jurors formed themselves into detached groups, and amused themselves as they could in their dark, hungry, and desolate situation. It was a Vauxhall night; and one of the jury attempted to console his fellows by reminding them that at twelve o'clock at night they would have the fire-works at Vauxhall to enlighten their darkness. Twelve o'clock came, but the fire-works, though they were heard, were not seen, for the towers of the Abbey intervened, and interrupted the line of vision. Mr. Godsall, at this hour of the night, was rather obstreperous. He stamped about the room in a great passion, and committed other extravagancies. Mr. Sawyer, having heard all that could be said against him, and having said all that he could say in his own behalf, now prepared himself for sleep, by taking off his coat, rolling it up, and placing it as a pillow upon some chairs, which he had put together to serve him as a bed. His brother jurors expressed dissatisfaction at this proceeding, and urged many objections to his novel mode of discharging the duties of a juryman. After giving them such answer as he

thought proper, and recommending his seconder, Mr. Cooke, to follow his example, on the ground that sleep was the best antidote against the evils of fasting, he proceeded to carry his own advice into execution as rapidly and comfortably as he could under existing circumstances. This was the gentleman who was described in our paper of Saturday as seen lying upon some chairs at one of the periods when the room was opened by the officer to attend to the complaints of the jury. Day-light at last dawned upon these unhappy jurors, but brought with it little relief to their misery. At half-past five, Mr. Sawyer, who was the only person that had been able to sleep soundly, awoke, and told his brothers in thraldom that he was as much refreshed by his sleep as if he had taken a meal. This was not a very delightful annunciation to those gentlemen who were suffering under the want of sleep and the want of sustenance. To Mr. Godsall it proved particularly exasperating; he exhibited symptoms of temporary insanity; he jumped upon a bench, and threatened destruction to Mr. Sawyer, for detaining him from his family, by his obstinate opposition. He then seized his cane, which was of considerable thickness, and struck it so forcibly upon the Judge's seat as to make several indentations, and did not cease from this violence till he had broken it completely into shivers. He

then began to rail with great vehemence against Mr. Sawyer, who had the good sense not to make any answer to his ravings. This appeared to offend him still more: he cried out, 'I shall go mad, I shall go mad, he—he' (pointing to Mr. Sawyer,) 'is cutting my throat with a feather.' He then made a spring at that gentleman, and would certainly have done him some injury, had he not been prevented by the strong arms of those that surrounded him. It has been stated, that he then endeavoured to tear up a bench as a weapon, and that he broke a window in endeavouring to escape; but we have reason to believe that there is no truth in either of these statements. He sunk, at last, into a silent melancholy, and was for some time quiet from complete exhaustion.

"Very early in the morning, the question had been narrowed to this point—whether the verdict should be a farthing or forty shillings. Mr. Sawyer was obliged to consort with his silent but effective seconder, Mr. Cooke. Whenever he approached any of the groups into which the other jurors had formed themselves, they fled from him as from a pestilence. The consequence was, that he was flung upon his own resources for amusement, and at seven o'clock was seen seated at the window, gazing very placidly on the passengers in the street. Poor Mr. Godsall could not, however, conduct himself thus quietly: he

attempted to force himself out of Court, but was unsuccessful, in spite of all his protestations that parties within were driving him to madness."

"A seaman coming before the judges of the Admiralty for admittance into an office of a ship bound for the Indies, was by one of the judges much slighted, as an insufficient person for that office he sought to obtain; the judge telling him, 'that he believed he could not say the points of his compass.' The seaman answered, 'that he could say them, under favour, better than he could say his *pater-noster*.' The judge replied, 'That he would wager twenty shillings with him upon that.' The seaman taking him up, it came to trial: and the seaman began, and said all the points of his compass very exactly: the judge likewise said his *pater-noster*: and when he had finished it, he required the wager, according to agreement, because the seaman was to say his compass *better* than he his *pater-noster*, which he had not performed. 'Nay, I pray, Sir, hold,' quoth the seaman, 'the wager is not finished; for I have but half done:' and so he immediately said his compass backward very exactly; which the judge failing of in his *pater-noster*, the seaman carried away the prize." (*Bacon's Apothegms.*)

ANECDOTE OF SIR MATTHEW HALE.

"Not long after he was made a judge, which was in the year 1653, when he went the circuit, a trial was brought before him at Lincoln, concerning the murder of one of the townsmen, who had been of the king's party, and was killed by a soldier of the garrison there. He was in the fields with a fowling-piece on his shoulder, which the soldier seeing, he came to him, and said it was contrary to an order which the Protector had made, 'That none who had been of the king's party should carry arms;' and so he would have forced it from him; but as the other did not regard the order, so being stronger than the soldier, he threw him down, and having beat him, he left him. The soldier went into the town, and told one of his fellow-soldiers how he had been used; and got him to go with him, and lie in wait for the man, that he might be revenged on him. They both watched his coming to town, and one of them went to him to demand his gun, which he refusing, the soldier struck at him, and as they were struggling, the other came behind, and run his sword into his body, of which he presently died. It was in the time of the assizes, so they were both tried; against the one there was no evidence of forethought felony, so he was only found guilty of manslaughter, and burnt in the

hand; but the other was found guilty of murder; and though Colonel Whaley, that commanded the garrison, came into the court, and urged, that the man was killed only for disobeying the Protector's orders, and that the soldier was but doing his duty; yet the judge regarded both his reasonings and his threatenings very little, and therefore he not only gave sentence against him, but ordered the execution to be so suddenly done, that it might not be possible to procure a reprieve, which he believed would have been obtained, if there had been time enough granted for it." (*Burnet's Life of Hale, p.* 28.)

"Mr. Howland, in conference with a young student, arguing a case, happened to say, 'I would ask you but this question.' The student presently interrupted him to give him an answer; whereupon Mr. Howland gravely said, 'Nay, though I asked you a question, I did not mean you should answer me; I mean to answer it myself.'" (*Bacon's Apothegms,* 121.)

LEGAL RECOLLECTIONS OF LONDON.

No. I.

The many legal recollections and associations with which London abounds are of a very inteteresting character. It has been the seat of our

courts of justice from their very foundation, and the domicile of our lawyers; the scene which has witnessed every thing most remarkable in forensic anecdote. Westminster Hall, the home and mansion-house of justice, the Temple and the other Inns of Court, with their dependencies, the Tower, whose walls have enclosed so many illustrious prisoners, nay, even Newgate and the Fleet, all revive a number of highly curious recollections, which, in addition to the amusement they afford us, at the same time throw no inconsiderable light on the pages of history, or the manners and actions of our ancestors. It is proposed, in a series of articles, dispersed through the present volumes, to ramble, as it were, through the metropolis, and to examine the various buildings or sites which are rendered remarkable by their legal associations. At the same time it will not, perhaps, be considered either unamusing or impertinent, to add such historical and antiquarian notes and references as may induce the graver reader to rely on the authority of our pages.

Commencing our peregrinations at the ancient entrance into the city, Temple Bar, we arrive in a few steps at the gate of the Middle Temple, which is comparatively of modern construction. The old gate, which was destroyed in the great fire of 1666, was erected by Sir Amias Powlet, on a singular occasion. It seems, that about the

year 1501, the Knight had thought fit to put Cardinal Wolsey, then parson of Lymington, into the stocks. (*Fiddes's Life of Cardinal Wolsey.*) In 1515, being sent for to London by the Cardinal, on account of this ancient grudge, he was commanded not to quit town until further orders. In consequence he lodged five or six years in this gateway, which he rebuilt, and to pacify his eminence, adorned the front with the cardinal's cap, badges, cognizance, and other devices. So low, observes Mr. Pennant, were the great men obliged to stoop to that meteor of the times. (*History of London*, 227.)

Proceeding down Middle Temple Lane, a dark, narrow, and awkward approach, we arrive at the Hall of the Middle Temple, which, after Westminster Hall, is, perhaps, the finest building of the kind in the country. The foundation of the present Hall was laid in 1562, and the edifice was completed in 1572, during the treasurership of the celebrated Edmund Plowden. In 1574, the curious carved screen at the lower end was added, and paid for by a contribution of 20s. from each bencher, 10s. from each barrister, and from every other member, 6s. 8d.

The Middle Temple Hall is in length, including the passage, one hundred feet, in width forty-four feet, and in height upwards of sixty feet.

The following is the description of this Hall, given in Herbert's History of the Inns of Court.

"The roof is generally constructed of timber, and the other decorations of the interior are in a style of correspondent grandeur; but what adds particularly to the splendour of its appearance, is its fine stained windows. They contain the armorial bearings of 154 persons, members of this inn, most of whom were men of eminence, and among them several of royal and noble rank; the great bay window at the south-west end, alone contains thirty coats of arms, and, when illuminated by the sun, has an uncommonly rich effect.

"Along the sides, which are wainscoted to a considerable height, are the arms and names of the *readers*, from Richard Swaine, dated 1597, to 1804. This place is still preserved, and the readers annually elected; but the lectures, or readings, as before observed, have been long disused.

"The oldest date in the windows is 1540. This coat of arms was probably removed from the former Hall, which stood on this site. Among the more modern ones are those of the Lord Chancellors Cowper, Yorke, and Somers, the late Lord Chief Justice Kenyon, Lord Ashburton, Sir Pepper Arden, (afterwards Lord Alvanley,) and the present Lord-Chancellor. The arms of the last four are the work of Mr. Pearson, and are very beautiful.

"Besides these decorations the Hall contains excellent busts of the twelve Cæsars, in imitation of bronze, and full-length portraits of the following personages: Charles I. and the Duke d'Epernon, (Vandyke,) a very large picture, from which a print has been engraved by Bacon. King Charles II.; the Duke of York, afterwards James II.; William III.; Queen Anne; and King George II. There is likewise at the upper end, near the great window, an ancient painting of the Judgment of Solomon, of considerable merit, with a Latin inscription beneath.

"The music-gallery at the entrance must not be forgotten; it is of bright wainscot, supported by columns of the Doric order, fluted, and the pedestals enriched with figures in *alto relievo*; the intercolumniations, the pannels over the doors, and all other parts of this screen, are most elaborately carved; above it hangs several suits of rusty armour, matchlocks, &c. of the Elizabethan æra.

"The massy oak tables and benches with which this apartment was anciently furnished, still remain, and so may do for centuries, unless violently destroyed, being of wonderful strength. In the Parliament Chamber are painted the arms of the Treasurers, since the first who possessed the office; it is likewise adorned with some of Gibbons's carving.

"The building of the Hall, it appears, put the

nouse much in debt, and the incumbrance was not discharged for some years afterwards; for in 17 Elizabeth, (16 Junii,) there was an order made in the Parliament, 'That forasmuch as by one decree, made 8 Feb. 13 Eliz. the old pensions had been augmented for three years then next following, towards the payment thereof; and by another, held 10 Feb. 16 Eliz. that they had been augmented one year more, to the same purpose, and that all these helps are not sufficient, that the augmentation of the said pensions should continue yet one year longer.'" (*Herbert's Inns of Court*, 246.)

Turning to the left from the Middle Temple Hall, and passing through an arch-way we arrive at the garden of the Inner Temple. Shakspeare has made the Temple Garden the scene of the 'brawl" between the houses of York and Lancaster, when the cognizances of the white and red roses were chosen by the partizans of the two families. Richard Plantagenet's lodging being in the Temple, renders the locality of the scene more probable. Mortimer says to one of his jailers,

"Tell me, keeper, will my nephew come?
Keep. Richard Plantagenet, my Lord, will come.
We sent unto the *Temple* to his chamber,
And answer was return'd that he will come."

The altercation, it appears, had begun in the Temple Hall, for Suffolk says,

"Within the Temple Hall we were too loud;
The garden here is more convenient."

After the plucking of the roses, Warwick exclaims,

"This brawl to-day,
Grown to this faction in the Temple Garden,
Shall send, between the red rose and the white,
A thousand souls to death and deadly night."

There appears to be some doubt whether the Inner or the Middle Temple Garden is entitled to these classical associations. It is thought the latter possesses the preferable claim.

The garden runs along the bank of the Thames, and the walk, or terrace, upon the brink of the river, forms a healthy and pleasant promenade, ornamented with a fine view of Waterloo Bridge and Westminster Abbey to the right, and of Blackfriars' Bridge and St. Paul's to the left. In its prospect the garden of the Inner Temple is much superior to its rival of the Middle Temple, though the latter is adorned with a short avenue of fine lime-trees, which in summer forms a most refreshing shade. May no sacrilegious bencher meditate their destruction! In these gardens may be seen those pensive *desœuvré* lawyers,

"Who in trim gardens take their pleasure;"

while their more fortunate brethren are acquiring fame and profit amid the heat, the noise, and the bustle of the courts.

through the Temple. Chaucer is reported to have been a Templar, and in later days, Johnson occupied a miserable set of chambers in Inner Temple Lane. The Mitre Tavern, situated at the termination of a passage leading from the Temple to Fleet-street, was a favourite haunt of the great Lexicographer. The chambers in King's Bench Walk, in which lord Mansfield resided, are immortalized in the verse of Pope:

"To number five direct your doves,
There spread round MURRAY all your blooming loves;"

and in the parody of Cibber:

"Persuasion tips his tongue whene'er he talks,
And he has Chambers in the King's Bench Walks."

[*To be continued.*]

"A thief being arraigned at the bar for stealing a mare, in his pleading urged many things in his own behalf, and at last nothing availing, he told the Bench, the mare rather stole him than he the mare; which in brief he thus related: That passing over several grounds, about his lawful occasions, he was pursued close by a fierce mastiff dog, and so was forced to save himself by leaping over a hedge, which, being of an agile body, he effected; and in leaping, a mare standing on

the other side of the hedge, leaped upon her back, who, running furiously away with him, he could not by any means stop her, until he came to the next town, in which town the owner of the mare lived, and there he was taken and here arraigned." (*Bacon's Apothegms.*)

LORD MANSFIELD.

The following character of Lord Mansfield is from the pen of Mr. H. Hawkins.

"Of lord Mansfield's intellectual powers, his great comprehension, or his eloquence, it is needless to say a word, as the concurrent testimony of all who could form a judgment of him, has already placed him among the first men of his time; but of the wise and honourable use of those talents it may be permitted to one who perfectly well remembers him, though but in his latter days, to mention that of which he was an ear-witness. Many a time I have heard him deliver the decision of the court on abtruse points of law, with a profundity of reasoning, where scarcely even a well-informed mind could follow him, and with an accuracy and precision of judgment, so satisfactory, as to induce the parties in the cause, when apprised of the issue of their law-suit, to instruct their counsel to make their acknowledgments to the court, as having been the means of restoring peace and harmony to private families, and hav-

ing done every thing the parties desired. He was not what was considered a *profound lawyer*, when the term is applied to technical niceties in pleading, nor did he seem to have any very elevated opinion of that species of knowledge, or of those who possessed it. Mr. Wallace, who had been Attorney-General, and who was deeply versed in that department of legal information, and Mr. Howarth, who, however honourable and praiseworthy his conduct might be, was infinitely inferior to Wallace, happened to die at the same time. When lord Mansfield was told of their death, he scarcely expressed any concern for Mr. Wallace, but very great regret for Mr. Howarth.

"His disregard of the lawyers of the description above mentioned, led him to treat lightly those legal ceremonies which were connected with such attainments. At the making of a Sergeant, he has been known to laugh so heartily, that he was scarcely able to do that which his office required him to do.

"In addition to this instance of lord Mansfield's light estimation of those who were considered, by such as could best judge, as the most skilful, we might subjoin his treatment of Mr. Sergeant Hill, whose name has already been mentioned in this work. I have seen the Sergeant standing up in the court, immoveable as a

LORD MANSFIELD.

statue, and looking at no object, and arguing in support of his client's cause, so wrapt up in the workings of his own mind, as, seemingly at least, to be insensible to any objects around him. In the midst of his argument, which was frequently so perplexed by parenthesis within parenthesis, as to excite the laughter of the whole court, lord Mansfield would interrupt him with, 'Mr. Sergeant, Mr. Sergeant;' he was rather deaf,—the words were repeated without effect; at length, the counsel sitting near him, would tell him that his lordship spoke to him: this roused him. Lord M. would then address him with, 'The Court hopes your cold is better.' All this was done with a tone, and in a manner which showed that he wished to make the object of his apparent civility in fact an object of ridicule; and so far it must be considered as having succeeded. How far it was perfectly decorous in a judge, sitting in his Court, to indulge this little mischief, for we do not wish to call it by a harsh name, others may decide; but certainly he was very agreeable to the bar in other respects. Indeed, whenever this foible did not show itself, his patient attention, his assisting questions, if I may be allowed the term, and his intuitive comprehension of what was submitted to his understanding, made him an exceedingly pleasant judge to those who were called to argue deep questions before him.

"Of his eloquence in either the House of Lords or Commons, I cannot say anything; but of his speeches in the Court of King's Bench, I can say that they were always pertinent with respect to the subject before him; nothing was said for effect, nothing theatrical. It is known that, when in the House of Commons, he was considered as the antagonist to Mr. Pitt; and the writers of that period of our history inform us, that on very many occasions he shewed himself Pitt's superior, and plucked the laurel from his brows, on questions where, perhaps, the popular feeling was in Pitt's favour, which is very creditable if his judges were cool and dispassionate, as Pitt's speeches depended much on his tone and manner to produce the desired effect; without which many of them would be considered as having but slender claims to attention." (*Miss Hawkins's Memoirs, vol.* i. *p.* 253.)

SIR WILLIAM JONES'S FIRST SPEECH IN COURT.

The following amusing account of Sir William Jones's forensic *debût*, is given by Miss Hawkins, in her Memoirs, and is from the pen of her brother.

"Of Sir William Jones, the Memoirs have already appeared before the public; but as what I shall say is not generally known, and is perfectly authentic, it may, perhaps, be acceptable.

I remember to have heard him speak as a counsel in the court of King's Bench: the question before the court, arose from private disagreements in a family, which made a separation between husband and wife necessary; and there being a child, whose interests were to be taken care of, the interference of the court was required. A perfect silence prevailed,—the attention of all present being attracted to hear what 'Linguist Jones,' as he was even then called, would say. Though he could not have been accustomed to hear his own voice in a court of law, for I believe this was his forensic *debût*, he, nevertheless, spoke with the utmost distinctness and clearness, not at all disconcerted by the novelty of his situation. His tone was highly declamatory, accompanied with what Pope has called, 'balancing his hands,' and he seemed to consider himself as much a public orator as Cicero or Hortensius could have done. His oration, for such it must be called, lasted, I recollect, near an hour. But the orator, however he might wish to give a grand idea of the office of a pleader, did not, in the course of the business, entirely avoid the ridiculous; for, having occasion to mention a case decided by the court, he stated, in the same high declamatory tone in which he had delivered the whole of his speech, that he found, 'that it had been argued by one Mr. Baldwin.' Not being very conversant

with the state of the bar, he did not know that this 'one Mr. Baldwin' was, at the time of which I am speaking, a barrister in great business, and was then sitting not half a yard from the orator's elbow. It occasioned a smile, or, perhaps, more than a smile, on every countenance in court; but the orator proceeded as steadily as before. In the course of his speech, he had occasion to mention the governess of the child; and he had done it in such terms as conveyed, or must have conveyed to any one possessed of ordinary powers of comprehension, an idea that she was an extremely improper person to remain with a young lady: on the next day, therefore, Mr. Jones appeared again in the seat which he had occupied the preceding day; and when the judges had taken their seats, he began, with the same high declamatory tone, to inform the court, 'that it was with the deepest regret, he had learned that, in what he had had the honour to state to their lordships the preceding day, he was understood to mean to say, that Mrs. ——— was a harlot!' The gravity of every countenance in court yielded to the attack thus made upon it, and a general laugh was produced by it." (*Memoirs, &c. vol.* i. *p.* 224.)

LORD KAIMES.

The late Lord Kaimes used sometimes to let his wit get the better of his dignity as a judge. Be-

ing on the circuit at Perth, after a witness on a capital trial had concluded his testimony, his Lordship said, "Sir, I have one question more to ask you, and remember you are on your oath. You say you are from Brechin?" "Yes, my Lord." "When do you return thither?" "To-morrow, my Lord." "Do you know Colin Gillies?" "Yes, my Lord, I know him very well." "Then tell him that I shall breakfast with him on Tuesday morning!"

LORD MANSFIELD'S CELEBRATED SPEECH AT THE TIME OF WILKES'S RIOTS.

"It is fit to take some notice of the various terrors hung out; the numerous crowds which have attended, and now attend, in and about the Hall, out of all reach of hearing what passes in court, and the tumults which in other places have shamefully insulted all order and government: audacious addresses dictate to us, from what they call the People, the judgment to be given, now and afterwards, upon the conviction. Reasons of policy are urged from danger to the kingdom by commotions and general confusion.

"Give me leave to take the opportunity of this great and respectable audience to let the world know all such attempts are vain: unless we have been able to find an error which will bear us out to reverse the outlawry, it must be affirmed. The

constitution does not allow reasons of state to influence our judgments. God forbid it should! We must not regard political consequences, how formidable soever they might be; if rebellion were the certain consequence, we are bound to say, *Fiat Justitia, ruat cœlum.* The constitution trusts the king with reasons of state and policy; he may stop prosecutions, he may pardon offences; it is his to judge whether the law or the criminal should yield. We have no election: none of us encouraged or approved the commission of either of the crimes of which the defendant is convicted; none of us had any hand in his being prosecuted. As to myself, I took no part (in another place) in the addresses for that prosecution. We did not advise or assist the defendant to fly from justice; it was his own act, and he must take the consequences. None of us have been consulted, or had any thing to do with the present prosecution. It is not in our power to stop it; it was not in our power to bring it on. We cannot pardon. We are to say what we take the law to be; if we do not speak our real opinions, we prevaricate with God and our own consciences.

"I pass over many anonymous letters I have received: those in print are public; and some of them have been brought judicially before the court. Whoever the writers are, they take the wrong

way. I will do my duty unawed. What am I to fear? That *mendax infamia* from the press, which daily coins false facts and false motives? The lies of calumny carry no terror for me: I trust that my temper of mind, and the colour and conduct of my life, have given me a suit of armour against these arrows. If, during this king's reign, I have ever supported his government, and assisted his measures, I have done it without any other reward than the consciousness of doing what I thought right. If I have ever opposed, I have done it upon the points themselves, without mixing in party or faction, and without any collateral views. I honour the king and respect the people; but many things acquired by the favour of either, are, in my account, objects not worth ambition. I wish popularity; but it is that popularity which follows, not that which is run after. It is that popularity which, sooner or later, never fails to do justice to the pursuit of noble ends by noble means. I will not do that which my conscience tells me is wrong, on this occasion, to gain the huzzas of thousands, or the daily praise of all the papers which come from the press. I will not avoid doing what I think is right, though it should draw on me the whole artillery of libels; all that falsehood or malice can invent, or the credulity of a deluded populace can swallow. I can say, with a great magistrate upon an occasion,

and under circumstances, not unlike, '*Ego hoc animo semper fui, ut invidiam virtute partam, gloriam haud infamiam putarem.*'

"The threats go further than abuse; personal violence is denounced. I do not believe it. It is not the genius of the worst men in this country, in the worst of times; but I have set my mind at rest. The last end that can happen to any man never comes too soon, if he falls in support of the law and liberty of his country, (for liberty is synonymous to law and government;) such a shock too might be productive of public good; it might awake the better part of the kingdom out of that lethargy, which seems to have benumbed them; and bring the mad part back to their senses, as men intoxicated are sometimes stunned into sobriety." (*State Trials*, xix. 1111.)

This speech excited much observation at the time, more especially the passage respecting popularity, which was remarked upon by Horne Tooke on his trial for libel. Opposite to the quotation from Cicero, *Ego hoc animo, &c.* Mr. Sergeant Hill had written in his Copy of Burrow's Reports the following passage from Swift.

"The world will never allow any man that character which he gives to himself by openly professing it to those with whom he converseth. Wit, learning, valour, acquaintance, the esteem of

good men, will be known, although we should endeavour to conceal them, however they may pass unrewarded; but I doubt our own bare assertions upon any of these points will be of very little avail, except in tempting the hearers to judge directly contrary to what we advanced."

It seems that lord Mansfield and Sergeant Hill were not upon the best terms. Lord Mansfield was probably annoyed by the extensive and recondite legal learning which distinguished the Sergeant.

"Sir Nicholas Bacon, when a certain nimble-witted counsellor at the bar, who was forward to speak, did interrupt him often, said unto him, 'There is a great difference betwixt you and me: it is a pain to me to speak, and a pain to you to hold your peace.'" (*Bacon's Apothegms.*)

LAWS AGAINST THE JEWS.

In that most laborious compilation, Madox's History of the Exchequer, a great body of curious information is to be found relative to the early history of the Jews in England, which has also been fully illustrated by Dr. Tovey in his *Anglia Judaica.* The condition of the Jews at this period was most precarious and wretched. Not only were they liable to be pillaged at the will of the King, but also to be massacred by

the populace. At the commencement of the reign of Richard II. a dreadful transaction of this kind occurred. The King had issued an order that no Jews should be permitted to witness his coronation, which took place in Westminster Hall.

"But several of them who had come a great way off on purpose to behold the bravery of it, not caring to lose the labour and expense of their journey, and persuading themselves that being strangers in London they should pass undiscovered, ventured, notwithstanding the Proclamation, to appear at Westminster; but, being somehow or other found out by the officers of the Abbey, they were set upon with great violence, and dragged half dead out of the church.

"The rumour of which quickly spreading itself into the city, the populace believing they should do the king a pleasure, immediately broke open the Jews' houses and murdered every one they could meet with, not confining their rage to their persons, but destroying likewise their habitations with fire.

"Happy were they who could find a true friend to shelter them! All kinds of cruelty were exercised against them, insomuch that the soberest part of the citizens who had in vain endeavoured to quiet matters by themselves, sent some passengers to Westminster, desiring some assistance from the king, for fear the tumult should grow so

outrageous as to endanger the whole city." (*Anglia Judaica.*)

Some idea of the nature of the laws enacted at this time against the Jews may be formed from the following specimen.

"In or about the 37th year of King Henry III. it was provided that no Jew should remain in England without doing the King some service; that there should be no schools for Jews in England, except in places where such schools were wont to be in the time of King John; that all Jews in their Synagogues should celebrate with a low voice according to the rite of their religion, and that Christians were not to hear them celebrating; that every Jew should be answerable to the Rector of his parish for all parochial dues chargeable upon his house; that no Christian woman should suckle or nurse the child of a Jew, nor any Christian man or woman serve any Jew or Jewess, or eat with them, or abide in their house; that no Jew or Jewess should eat or buy flesh meat in Lent; that no Jew should detract from the Christian faith, or dispute publicly concerning it; that no Jew should have secret familiarity with any Christian woman, nor any Christian man with a Jewess; that every Jew should wear a badge upon his breast; that no Jew should enter into any church or chapel unless haply in passing to and fro, nor should stay there to

the dishonour of Christ; that no Jew should hinder another Jew who was willing to embrace the Christian religion, and that no Jew should be suffered to abide in any town without the King's special licence, save in those towns wherein Jews were formerly wont to reside. These articles were to be observed by the Jews under pain of forfeiting their goods." (*Madox's Hist. of the Exchequ.* i. 248.)

King John at the commencement of his reign had professed great kindness towards the Jews; but,

"In the 11th year of his reign the King began to lay aside his masque, and, finding that no new comers made it worth his while to stay any longer, he set at once upon the old covey which he had drawn into his net, and commanded all the Jews of both sexes throughout England to be imprisoned, until they should make a discovery of their wealth; which he appointed officers to receive in every county, and return to his exchequer. Many of them no doubt pleaded poverty, or pretended to have given up all; but as the tyrant was in earnest to have their last farthing, he extorted it by the most cruel torments.

"Stow says the generality of these had one eye put out; and Matthew Paris tells us that from one particular Jew in Bristol, the King demanded no less than ten thousand marks of silver,

(a prodigious sum in those days!) which being resolutely denied him, he commanded one of his great teeth to be pulled out daily till he consented. The poor wretch, whose money was his life, had the courage to hold out seven operations, but then sinking under the violence of the pain, ransomed the remainder of his teeth at the price demanded. The whole sum extorted from them at this time amounted to threescore thousand marks of silver." (*Tovey's Anglia Judaica.*)

"Howell in his *Londinopolis* tells us, that a Jew in the reign of Henry III. having by accident fallen into a privy on his sabbath, being a Saturday, would not suffer any one to take him out, though rather a necessary work. Common humanity," observes Mr. Barrington, "should not have permitted this obstinate adherence to a religious ceremony; however, the earl of Gloucester not only suffered him to continue in this filthy condition his own sabbath, (being Saturday,) but would not permit any one to take him out on the *Sunday*, being the Sabbath of the Christians: the Jew, by this cruel joke, was suffocated, nor do the Chroniclers of the time reflect upon the barbarity of it." (*Barrington's Ancient Statutes*, p. 203.)

"The Lord Keeper, Sir Nicholas Bacon, was

asked his opinion by Queen Elizabeth, of one of these monopoly licences. And he answered, 'Madam, will you have me speak the truth? *Licentiâ omnes deteriores sumus;* we are all the worse for licences.' " (*Bacon's Apothegms.*)

EXECUTION OF SIR THOMAS MORE.

" So remained Sir Thomas More in the Tower, more than a sevennight after his judgment. From whence, the day before he suffered, he sent his shirt of hair, not willing to have it seen, to my wife, his dearly beloved daughter, and a letter written with a cole, (contained in the foresaid book of his work,) plainly expressing the fervent desire he had to suffer on the morrow, in these words following: 'I comber you, good Margaret, much, but would be sorry if it should be any longer than to-morrow, for to-morrow is Sainct Thomas even, and the Utas of Sainct Peter, and therefore to-morrow I long to go to God: it were a day very meet and convenient for me. Dear Megg, I never liked your manner better towards me than when you kissed me last. For I like when daughterly love and dear charity hath no leisure to look to worldly courtesy.' And so upon the next morrow, being Tuesday, St. Thomas his eve, and the Utas of Saint Peter, in the year of our Lord 1535, according as he in his letter the day before had wished, early in the morning came

to him Sir Thomas Pope, his singular good friend, on message from the King and his council, that he should before nine of the clock of the same morning suffer death; and that, therefore, he should forthwith prepare himself thereto. 'Master Pope,' quoth Sir Thomas More, 'for your good tidings I heartily thank you. I have been always much bounden to the King's Highness for the benefits and honours that he hath still from time to time most bountifully heaped upon me; and yet more bounden am I to his Grace for putting me into this place, where I have had convenient time and space to have remembrance of my end. And, so help me God, most of all, Master Pope, am I bounden to his Highness that it pleaseth him so shortly to rid me out of the miseries of this wretched world, and therefore will I not fail earnestly to pray for his Grace, both here, and also in the world to come.' 'The King's pleasure is farther,' quoth Master Pope, 'that at your execution you shall not use many words.' 'Master Pope,' quoth he, 'you do well to give me warning of his Grace's pleasure, for otherwise, at that time, had I purposed somewhat to have spoken; but of no matter wherewith his Grace, or any other, should have had cause to be offended. Nevertheless, whatsoever I intended, I am ready obediently to conform myself to his Grace's commandment; and I beseech

you, good Master Pope, to be a mean to his Highness, that my daughter Margaret may be at my burial.' 'The King is content already,' quoth Master Pope, 'that your wife, children, and other friends, shall have liberty to be present thereat.' 'Oh, how much beholden then,' said Sir Thomas More, 'am I unto his Grace, that unto my poor burial vouchsafeth to have so gracious consideration!' Wherewithal Master Pope, taking his leave of him, could not refrain from weeping. Which Sir Thomas More perceiving, comforted him in this wise. 'Quiet yourself, good Master Pope, and be not discomforted: for I trust that we shall once in heaven see each other full merrily, where we shall be sure to live and love together, in joyful bliss eternally.' Upon whose departure, Sir Thomas More, as one that had been invited to some solemn feast, changed himself into his best apparel. Which Master Lieutenant espying, advised him to put it off, saying, 'That he that should have it was but a javill.' 'What, Master Lieutenant,' quoth he, 'shall I account him a javill that shall do me this day so singular a benefit? Nay, I assure you, were it a cloth of gold, I should think it well bestowed on him, as Sainct Cyprian did, who gave his executioner thirty pieces of gold.' And albeit, at length, through Master Lieutenant's importunate persuasion, he altered his apparel;

yet, after the example of the holy Martyr Sainct Cyprian, did he, of that little money that was left him, send an angel of gold to his executioner. And so was he, by Master Lieutenant brought out of the Tower, and from thence led towards the place of execution; where, going up the scaffold, which was so weak it was ready to fall, he said merrily to the Lieutenant, 'I pray you, Master Lieutenant, see me safe up, and for my coming down let me shift for myself.' Then desired he all the people thereabout to pray for him, and to bear witness with him, that he should now there suffer death in and for the faith of the Holy Catholic Church. Which done, he kneeled down, and, after his prayers said, turned to the executioner with a cheerful countenance, and said unto him: 'Pluck up thy spirits, man, and be not afraid to do thine office: my neck is very short; take heed, therefore, thou strike not awry for saving of thine honesty.' So passed Sir Thomas More out of this world, to God, upon the very same day which he most desired. Soon after his death, came the intelligence thereof to the Emperor Charles. Whereupon he sent for Sir Thomas Elliott, our English Ambassador, and said to him: 'My Lord Ambassador, we understand that the King, your master, hath put his faithful servant, and grave wise counsellor, Sir Thomas More, to death.' Whereupon Sir Thomas Elliott answer-

ed, 'That he understood nothing thereof.' 'Well,' said the Emperor, 'it is too true: and this we will say, that had we been master of such a servant, of whose doings ourselves have had these many years no small experience, we would rather have lost the best city of our dominion, than have lost such a worthy counsellor.' Which matter was by the same Sir Thomas Elliott to myself, to my wife, to Master Clement and his wife, to Master John Heywood and his wife, and unto divers others, his friends, accordingly reported." (*Roper's Life of More.*)

LORD CHANCELLOR COWPER.

William, Earl Cowper, was descended from an ancient family. Soon after he was called to the bar, his eloquence and skill rendered him very conspicuous in his profession. In the reign of King William he was made king's counsel; and in 1695 was chosen one of the representatives in parliament for the town of Hertford, his father, Sir William Cowper, being the other member. On the 11th October, 1705, he was made Lord Keeper of the Great Seal, in the place of Sir Nathan Wright, of which event, the Duchess of Marlborough thus speaks: "I prevailed with her Majesty to take the Great Seal from Sir Nathan Wright, a man despised by all parties, of no use to the crown, and whose weak and wretched

conduct had almost brought his very office into contempt. His successor, my Lord Cowper, was not only of the Whig party, but of such abilities and integrity, as brought a new credit to it in the nation." (*Conduct of Dowager Duchess of Marlborough, p.* 147.) "He was a lawyer," says Smollet, "of superior talents, engaging manners, and eminence in his profession, staunch in his Whig principles, and for many years considered as one of the best speakers in the House of Commons." (*Hist. of Eng. vol.* ii. *p.* 61.) It is universally agreed, that his manners and style of speaking were exceedingly prepossessing, and "that all the ornaments and graces of eloquence were displayed in him in the greatest perfection." To this distinguishing characteristic an allusion is made by Pope, in the interchange of compliments between the two brother Sergeants:

"'Twas, 'Sir, your law,'—and, 'Sir, your eloquence,'—
'Yours, Cowper's manner,'—'and yours, Talbot's sense.'"
(*Imit. Hor. Book* ii. *Epis.* 2. *l.* 133.)

It may be admitted, that Lord Cowper's abilities were not first rate, and the matter of his arguments was not equal to the manner of their delivery. He is said by Swift to be, "what we usually call a piece of a scholar, and a good logi-

cal reasoner, if this were not too often alloyed by a fallacious way of managing an argument, which makes him apt to deceive the unwary, and sometimes to deceive himself." (*History of Four Last Years of the Queen, p.* 23.)

Lord Cowper seems to have been a man of great urbanity and good feeling. He acted as Lord High Steward at the trial of the Earl of Oxford, to whom he behaved on that occasion with much politeness. He is said also to have been the judge who treated the ex-protector, Richard Cromwell, with so much consideration and respect. (*See Post.*)

He was invested with the dignity of Lord High Chancellor on the 4th May, 1707, and resigned his post, on the removal of the Whig Ministry in August, 1710. Upon the accession of George I. he was restored to the woolsack, 29th August, 1714, and ultimately quitted his high office in April, 1718, in consequence of a change in the cabinet. The act of resignation was in both instances voluntary, as the continuance of his services was solicited by the crown, an offer which his strict political principles would not permit him to accept. Lord Parker was his successor.

With respect to the private character of Lord Cowper, some severe reflections have been thrown out against him. In the twenty-third number of *The Examiner*, Swift has stigmatized him with

the name of *Will Bigamy*, and proceeds to remark: "This gentleman, knowing that marriage-fees were a considerable perquisite to the clergy, found a way of improving them *cent. per cent.* for the good of the church. His invention was, to marry a second wife while the first was alive, convincing her of the lawfulness by such arguments as he did not doubt would make others follow the same example. These he had drawn up in writing, for the general good; and it is hoped he may now have leisure to finish them." It has been said, that in the early part of his life, a pretended marriage, without the forms of law, took place between him and Mrs. Elizabeth Culling, by whom he had two natural children; and hence, probably, originated the story of the Chancellor having two wives, and the name given him by Swift, of *Will Bigamy*.

He died at his seat at Colne Green, in Hertfordshire, on the 10th of October, 1723, and was buried in Hertingfordbury church, not far from Hertford. At Colne Green three portraits of him remain, from which he appears to have been a very handsome man, with an open and intelligent countenance. (*Biog. Brit. vol.* iv.)

JUDICIAL CORRUPTION.

A history of Judicial Corruption in this country would, perhaps, furnish an instructive lesson.

If we may believe the author of the Mirror, the system took its rise very early in England. In the chapter on the "Abuses of the Common Law," it is said, that "it is abuse that justices and their officers, who kill people by false judgments, be not destroyed as other murderers, which King Alfred caused to be done, who caused forty-four justices in one year to be hanged as murderers, for their false judgments." The details of this wholesale piece of retribution are then given, with the names of all the corrupt judges who suffered. We extract a few of the cases, as specimens of the nature of their crimes.

"He hanged Cadwine, because that he judged Hackery to death without the consent of all the jurors; and whereas he stood upon the jury of twelve men, and because three would have saved him against the nine, Cadwine removed the three, and put others upon the jury, upon whom Hackery put not himself.

"He hanged Cole, because he judged Ive of death, when he was a madman.

"He hanged Athulf, because he caused Copping to be hanged before the age of one-and-twenty years.

"He hanged Athelston, because he judged Herbert to death for an offence not mortal.*

* This retributory sentence will, perhaps, remind the reader of a late case in one of our Colonies, where a

"He hanged Horne, because he hanged Simon at days forbidden.

"He hanged Therborne, because he judged Osgot to death for a fact whereof he was acquitted before, against the same plaintiff, which acquittance he tendered to own by oath, and because he would not own it by record, Therborne would not allow of the acquittal which he tendered him.

"He hanged the Suitors of Cirencester, because they kept a man so long in prison that he died in prison, who would have acquitted him by foreigners that he offended not feloniously."

There is also a singular fact, mentioned in the same chapter, that in Alfred's time the judges used to take twelve-pence from every plaintiff "at the journey."

It appears that in the reign of Edward I. the judges had become very corrupt: *Judicia perverterunt*, says Matthew of Westminster, *et in aliis erraverunt*. The King therefore, on his return from France, in the seventeenth year of his reign, (finding the measure convenient in order to replenish his exchequer, says Blackstone,) resolved to prosecute his judges, against whom many charges

---

prisoner was tried by the English Law for an offence by that law not capital, and was yet condemned to death. It was fortunate for the judges that they did not live in Alfred's time.

of erasing and altering records were brought forwards. Thomas Wayland, Chief Justice of the Common Pleas, was attainted of felony as an accessory in murder, and having abjured the realm, forfeited all his estates, which are said to have amounted to the enormous sum of 100,000 marks, or 70,000 pounds. (3 *Pryn. Rec.* 401, 402. 3 *Inst.* 146, 147. 223.)

The charge against Sir Ralph Hengham, or Ingham, was merely that he had, out of compassion, altered the record of a fine which had been imposed upon a very poor man, from 13s. 4d. to 6s. 8d., an offence, for which he was himself fined 800 marks. It appears, however, that though he was at this time removed from the bench, he was, about eleven years afterwards, again made a puisne judge, and subsequently, Chief Justice of the Common Pleas. (*See* 3 *Bl. Com.* 409. *Note.*) There is a tradition, that with this fine a clock-house was built at Westminster, and furnished with a clock,* to be heard into Westminster Hall.

---

* Lord Holt appears to allude to this anecdote in the following case, in which the propriety of altering a record came in question. His Lordship's observation must appear ludicrously inapplicable to any one who does not recollect the anecdote. (*See* 6 *Mod.* 130.)

ANONYMOUS.

In ejectment the term was made for five years; and after a verdict for the plaintiff, he was delayed of judg-

(4 *Inst.* 255.) It has been remarked, in answer to this, that clocks did not come into common use until a hundred years afterwards, about the end of the fourteenth century.

How usual a practice it was in the sixteenth century, to present gifts to the Judges when the donor had a cause depending before them, appears from many anecdotes recorded in our legal biography. In Roper's Life of Sir Thomas More, some incidents of this kind are related. "And had he not been one, that in all his great offices and doings for the King and the realm so many years together had from all corruption of wrong-doing, or bribes-taking, kept himself so clear, that no man was able therewith to blame or blemish him; it would, without doubt, in this troublesome time of the King's indignation towards him, have been deeply laid to his charge, and of the King's Highness most favourably accepted. As in the case of

---

ment and execution, by injunction in Chancery, until the term incurred.

And now it was moved to renew the term, and the case of Dougdell *v.* Greenville was quoted, where it was done, and that they used to do it frequently in the Exchequer.

Curia. We cannot do it without altering the record.

Gould, J. said, that they held in Sir J. Rolle's case, that it could be done by consent, but not otherwise.

Holt, C. J. said, *he considered there wanted a clock-house over against the hall-gate.*—And the motion was denied.

one Parnell, it most manifestly appeared, against whom, because Sir Thomas More, when he was Chancellor, at the suit of one Vaughan, his adversary, had made a decree, this Parnell to his Highness most grievously complained that he, for making the decree had, of the said Vaughan, unable to travel abroad himself for the gout, by the hands of his wife, taken a fair *great gilt cup* for a bribe. Who thereupon by the King's appointment being called before the whole council, where the matter was heinously laid to his charge, forthwith confessed that forasmuch as that cup was long after the foresaid decree, brought him for a new year's gift, he upon her importunate pressing upon him thereof, of courtesy refused not to receive it. Then the Lord of Wiltshire for hatred of his religion, preferrer of this suit, with much rejoicing, said unto the Lords, 'Lo! my Lords, did I not tell you, my Lords! that you would find this matter true?' Whereupon Sir Thomas More desired their Lordships, that as they had heard him courteously tell the one part of his tale, so that they would vouchsafe of their honours indifferently to hear the other. After which obtained, he farther declared to them, that albeit he had indeed with much work received that cup, yet immediately thereupon caused he his butler to fill it with wine, and of that cup drank to her, and that when he had so done, and she pledged him,

then as freely as her husband had given it to him, even so freely gave he the same to her to give unto her husband for his new year's gift, which at his instant request, though much against her will, at length, yet she was fain to receive, as herself and certain others, there present before them, deposed. Thus was the great mountain turned scant to a little mole-hill.

"So I remember that at another time, upon a new year's day, there came unto him one Mistress Croker, a rich widow, for whom with no small pains, he had made a decree in the chancery against the Lord of Arundell, to present him with a pair of gloves, and forty pounds in Angels in them, for a new year's gift, of whom he thankfully received the gloves, but refusing the money, said unto her, 'Mistress, since it were against good manners to forsake a gentlewoman's new year's gift, I am content to take your gloves; as for your money I utterly refuse it;' so, much against her mind, enforced he her to take her gold again. And one Master Gresham, likewise, at the same time having a cause depending in the Chancery before him, sent him for a new year's gift a fair gilt cup, the fashion whereof he very well liking, caused one of his own, though not in his fantasy of so good a fashion, yet better in value, to be brought out of his chamber, which he willed the messenger in recompense to deliver

unto his master, and under other conditions would he in no wise receive it." (*Roper's Life of More, p.* 60.)

The practice of Judicial corruption appears to have prevailed to a considerable extent at the commencement of the sixteenth century, as may be inferred from Bacon's address to Sergeant Hutton, on the latter being appointed a Judge of the Common Pleas. He thus solemnly cautions the new Judge: "That your hands and the hands of your hands (I mean those about you) be clean and uncorrupt from gifts, from meddling in titles, and from serving of turns, be they great ones or small ones." It would indeed have been fortunate for Bacon's reputation had he remembered the advice himself which he here gave to another. The charges of accepting bribes were most of them confessed by him, though often with extenuating observations, as that they were received after the causes were ended. The following were amongst some of the most remarkable charges.

Item. In the cause between Hodie and Hodie, a dozen of buttons, after the cause ended, of the value of 50l.

Item. In the cause of Kenday and Valore, of Kenday, a cabinet worth 800l. Of Valore, borrowed at two times, 2000l.

Item. In the Lord Mountaine's cause, of the

Lord Mountaine, and more promised at the end of the cause, 600l. or 700l.

Item. In a cause between Raynell and Peacock, 200l. in money, and a diamond ring worth 500l. or 600l.—700l. or 800l.

Item. There being a reference from his Majesty to his Lordship of a business between the Grocers and Apothecaries, he had of the Grocers, 200l. Of the Apothecaries, beside a rich present of ambergrease, 150l.

Item. Of the French Merchants, to constrain the Vintners of London to take 1500 tuns of wine; to accomplish which, he used very indirect means, by colour of his office and authority without bill or other suit depending, as threatening the Vintners, for which he received of the Merchants 1000l."

Bacon, it is said, attempted to excuse his corruption by alleging that he had taken bribes "to do justice, not to do injustice." In a letter to the King, he says: "And for the briberies and gifts wherewith I am charged, when the book of hearts shall be opened, I hope I shall not be found to have the fountain of a corrupt heart, in a depraved habit of taking rewards to pervert justice; howsoever I may fail and partake of the corruption of the times." The sentence upon Bacon was, that he should undergo a fine of 40,000l.; that he should be imprisoned in the Tower during the

King's pleasure; that he should for ever be incapable of any office, place, or employment in the State or Commonwealth, and that he should never sit in Parliament, or come within the verge of the Court. The King granted him a full pardon of the whole sentence, but he was not again summoned to Parliament before the reign of Charles I.

In the reign of Charles II. the system of judicial bribery and corruption was in full vigour. The king himself, (*See Barrington's Observations on the Ancient Statutes,*) in appeals to the House of Lords, used to go about whilst the cause was hearing, and solicit particular lords for appellant or respondent. Whitelock, then a barrister, applied to the judges with regard to a prosecution for a libel on his father, who had been on the bench, and was then dead. The libeller was indicted after this previous conversation, and convicted. Sir Matthew Hale appears to have experienced great difficulty in avoiding the importunity of persons who were desirous of securing his favour.

"He would never receive private addresses or recommendations from the greatest persons, in any matter in which justice was concerned. One of the first peers of England went once to his chamber, and told him, that having a suit at law to be tried before him, he was then to acquaint him with it, that he might the better understand it

when it came to be heard in court. Upon which, the Lord Chief Baron interrupted him, and said, he did not deal fairly to come to his chamber about such affairs, for he never received any information of causes but in open court, where both parties were to be heard alike. So he would not suffer him to go on; whereupon his Grace (for he was a Duke) went away, not a little dissatisfied, and complained of it to the King as a rudeness which was not to be endured. But his Majesty bid him content himself that he was no worse; and said, he verily believed he would have used himself no better, if he had gone to solicit him in any of his own causes.

"Another passage fell out in one of his circuits, which was somewhat censured as an affectation of an unreasonable strictness; but it flowed from his exactness to the rules he had set himself. A gentleman had sent him a buck for his table, that had a trial at the assizes; so when he heard his name, he asked, if he was not the same person that had sent him venison; and finding he was the same, he told him, he could not suffer the trial to go on till he had paid him for his buck; to which the gentleman answered, that he never sold his venison, and that he had done nothing to him that he did not do to every judge that had gone that circuit, which was confirmed by several gentlemen then present; but all would not do, for the Lord Chief

Baron had learned from Solomon, that a gift perverteth the ways of judgment, and therefore he would not suffer the trial to go on till he had paid for the present; upon which the gentleman withdrew the record. And at Salisbury, the Dean and Chapter having, according to the custom, presented him with six sugar-loaves in his circuit, he made his servants pay for the sugar before he would try their cause."

The conduct of Lord Hale upon this occasion, might, perhaps, be properly censured as "an affectation of an unreasonable strictness;" for to have accepted the venison as a present, would not have infringed the strict form of the ancient judicial oath, which ran, "not to receive any fee or pension, &c. nor any gift, reward, or bribe, of any man having suit or plea before him, *saving meat and drink, which shall be of no great value.*"

North, when Chief Justice of the Common Pleas, in the reign of Charles II. appears not to have been altogether free from suspicions of bribery, notwithstanding the pure character of him given by his brother, Roger North. "There was," says the author of the Lives of the Chancellors, "an odd story of a chancery suit between the Duke of N——— and Sir P——— H———, in his time, and of some gold plate in a box; but it looks too invidious to relate it." (*Vol.* i. *p.* 178.) After he was made Lord Keeper, he incurred

great blame by the acceptance of a pecuniary present from some of the officers of his court. The anecdote is thus related by Roger North.

"One thing more is to be remembered, which was talked in coffee-houses, concerning his Lordship; but by them only who were the culpables. The Six Clerks have great dependance on the course of the Court of Chancery for their profits, and are always disposed to keep the Judge in good humour, and prevent alterations to their prejudice. *And all the Judges of the Courts make no scruple to accept presents of value from the officers,* by way of new year's gift, or otherwise; which is a practice not very commendable, because with some it may have bad effects. Accordingly, these Six Clerks clubbed, and made a present to his Lordship of 1000l., which he took as an instance of their respect, without regard to, or knowledge of, any other design or intention of theirs. But soon after this they began to fall out with the sixty under clerks, and pretended to remove them at pleasure, being their substitutes, for whom they were to answer, as masters turn servants away whom they can trust no longer. The sixty, on the other side, stood upon it that they bought and paid for their seats, and were sworn into their places, and however they were subject and accountable to the six, they were not at their mercy to be removed without the authority of the

Court. The six thought fit to put in practice their own authority, and began with one Sewel, a clerk, one of the sixty, and ordered him out of his seat, and, as I remember, gave it to another. This produced a petition of this Sewel to his Lordship, praying to be restored, and the rest of the sixty confirmed in their places; of which decree the justice is unexceptionable. It is no wonder that the six were infinitely disgusted; for if they had any bad design, as it seems plain they had, of adding sixty to their six, they had their reward. I am firmly persuaded that his Lordship knew nothing of it till the cause upon the petition came before him; and if he had known of it before, he had not accepted their kindness, and that afterwards he repented him of it. And of all the actions of his life this came nearest to a colourable misconstruction. Nay, there is no other capable of any. And, I guess, that although I have here related it undisguised, and out of my personal knowledge, many will incline to take it in the worse sense, and, as being a plain bribe, though the consequence flies in the face of it, and for that reason many would have left out this whole passage, so singular as it is; but professing, as I do, to render every action of his Lordship conspicuous, I could not acquit myself to deal so with this, which would have manifestly tainted all

I have shewed for his Lordship's advantage." (*Life of Lord Guilford, vol.* ii. *p.* 246.)

"The execrable Jefferies was as corrupt as he was cruel, and is said to have received so large a bribe as 14,500l. from one individual, whose life was in danger." (*Lives of the Chancellors, vol.* i. *p.* 183.) So general, indeed, was the practice of judicial corruption in the reign of Charles II. that a member of the House of Commons, (Mr. Booth, afterwards Lord Delamere,) in moving that certain judges should be impeached, thus expressed himself: "Our judges have been very corrupt and lordly; *taking bribes*, and threatening juries and evidence, perverting the law to the highest degree, turning it upside down, that arbitrary power may come in upon their shoulders. The cry of their unjust dealings is great, for every man has felt their hand." (*Lord Delamere's Works.*)

At the commencement of the last century the very corrupt practice which had obtained in the Court of Chancery, and which we have already noticed in the anecdote respecting Lord Guilford, was abolished by Lord Chancellor Cowper. It had been usual, since Lord Ellesmere's time, (James I.) for the gentlemen of the bar to make a new year's gift to the Lord Chancellor, and latterly this gift had been presented in the shape of money. Lord Bacon in his Confessions, generally styles the sums of money which he received,

"New-year's Gifts." Lord Cowper, on accepting the seals, not only strictly enjoined the officers of the court to discharge their duties without receiving any extra fees, on pain of being cashiered; but likewise put an end to the custom of new-year's gifts. The amount of these presents, according to Burnet, was 1500l. a year.

It is observable, that a practice very similar to the one above mentioned has obtained at various times and in different countries. The Athenian magistrates, according to Plutarch, were authorized to require a remuneration from the suitors of their courts. And in Rome, by a Law of Justinian, certain inferior magistrates were allowed to receive presents of a fixed amount from their suitors. The following is the account given by Mr. Butler of a similar practice which existed at one time in France.

"To secure to the judges the proportion which the suitors were to contribute towards the expense of justice, it was provided by an ordonnance of St. Louis, that at the commencement of a suit, each party should deposit in Court the amount of one tenth part of the property in dispute; that the tenth deposited by the unsuccessful party should be paid over to the judges on their passing sentence, and that the tenth of the successful party should be returned to him. This was varied by subsequent ordonnances; insensibly it became

a custom of the successful party to wait upon the Judges after the sentence was passed, and as an acknowledgment of their attention to the cause, to present them with a box of sweet-meats, which were then called *epiçes*, or spices: by degrees this custom became a legal perquisite of the Judges; it was converted into a present of money, and the payment of it required by the Judges before the cause came to a hearing. *Non deliberentur donec solventur species*, say some of the ancient registers of the Parliaments of France. The practice was afterwards abolished, the amount of the *epiçes* was regulated, and in many cases the taking of them was forbidden. Speaking generally, they were not payable till final judgment; and, if the matter were not heard in Court, but referred to a Judge for him to hear and report his decision upon it to the Court, he was entitled to the whole of the *epiçes*, and the other Judges were entitled to no part of them. Those among the magistrates who were most punctual, and diligent in their attendance in Court, and the discharge of their duty, had most causes referred to them, and were therefore richest in *epiçes*, but the superior amount of them, however it might prove their superior exertions, added little to their fortune, as in the whole year it did not often exceed 50l. and never 100l. The Judges had some other perquisites, and also some remuneration

from Government; but the amount of the perquisites and remuneration of any Judge, excepting those of the Presidents, amounted to little more than the *epiçes*. The Presidents of the Parliament had a higher remuneration, but the price which they paid for their offices was proportionably higher, and the whole sum received by any Judge for his *epiçes*, perquisites, and other remunerations, fell short of the interest of the money which he paid for the charge, so that virtually the French Judges administered justice not only without salary, but even with pecuniary loss. Their real remuneration was the rank and consideration which their office gave them in society, and the respect and regard of their fellow citizens. How well does this illustrate Montesquieu's aphorism, that the principle of the French Monarchy was honour! It may be truly said, that the world has not produced a more learned, enlightened, or honorable order of men than the French Magistracy." (*Reminiscences, p.* 38.)

The latest instance of a charge of corruption preferred against an English Judge, is to be found in the case of the Earl of Macclesfield, Lord Chancellor, who was impeached of certain high crimes and misdemeanors in the year 1725. The principal charges against him were, for receiving large sums of money from persons whom he appointed Masters in Chancery, charges against

which the Earl attempted to defend himself, by asserting, "that the same had been long used and practised in the time of his predecessors, and that such presents had been reckoned amongst the ancient and known perquisites of the Great Seal, and the making and accepting thereof had been notorious to all the world, and never before looked upon to be criminal, or complained of as such."—"And the said Earl humbly hopes that the giving or receiving of a present on such occasion is not criminal in itself, or by the common law of this realm, and that there is not any act of Parliament whatsoever by which the same is made criminal, or subject to any punishment or judgment, which can be prayed in this prosecution: and the said Earl thinks himself obliged humbly to lay this before your Lordships, not only in his own defence, but in vindication of the honor of so many great and excellent men who have been his predecessors in the said office, and have all along done the same, for which the said Earl is now complained of, and of others having been Lord Chief Justices of the King's Bench and Common Pleas, Masters of the Rolls, and other Judges, who have likewise received presents in money, upon the admission of several and respective officers under them, in several Courts of Justice, and who, the said Earl is assured, never apprehended themselves to be guilty of any crime

against any of the good and wholesome laws of this realm." The Lord Chancellor was, notwithstanding the practice of his "many great and excellent predecessors," found guilty, and fined in the sum of 30,000l. (*State Trials, vol.* xvi.)

It cannot be supposed that when the great officers of Justice manifested so corrupt a spirit, inferior magistrates should be more pure; and accordingly we find a very indifferent character of the Justices of the Peace given by Sir Nicholas Bacon, in a speech which he delivered, as Lord Keeper, in the reign of Elizabeth, (1571.) "Were it possible," says he, "trow you, that if Justices, being dispersed throughout the whole realm as they be, did carefully and diligently endeavour themselves, according to the trust committed to them by their sovereign, duly and truly to execute their charge, as they be bound by their oath to God, and by their allegiance to their sovereign, and by duty to their natural country, and, rightly considered, by the love they should bear to themselves and their posterity, (for if their country do not well, they will fare but ill-favouredly,) were it possible, I say, if this were so done, that laws should be thus remissly and negligently executed? No, doubtless. Is it not (trow you) a monstrous disguising, to have a Justice a maintainer, to have him that by his oath and duty should set forth justice and right, against his oath offer injury and

wrong; to have him that is specially chosen amongst a number, by a prince, to appease all brawlings and controversies, to be a server and maintainer of strife and sedition, by swaying and leading of Juries according to his will, *acquitting some for gain, indicting others for malice*, bearing with them as his servant or friend, overthrowing others as his enemy; procuring the questmonger to be of his living, or otherwise in his danger; that his winks, frownings, and countenances, may direct all inquests? Surely, surely, these be they that be subverters of all good laws and orders, yea, that make daily the laws, which of their nature be good, to become instruments of all injuries and mischief." (*D'Ewes's Journal, p.* 153.)

We have another character of a Justice of the Peace, in the same reign, given by Mr. Gascock, a Member of the House of Commons.

"A Justice of the peace is a living creature, that for half a dozen of chickens will dispense with a whole dozen of penal Statutes. We search and ingross the retail. These be the basket Justices, of whom the tale may be verified of a Justice that I know, to whom one of his poor neighbours coming said, 'Sir, I am very highly rated in the subsidy book; I beseech you to help me.' To whom he answered, 'I know thee not.' 'Not me, Sir?' quoth the countryman, 'why, your Worship had my team and oxen such a day, and I

have ever been at your Worship's service.' 'Have you so, Sir?' quoth the Justice, 'I never remembered I had any such matter, no, not a sheep's tail.' So unless you offer sacrifice to the Idol Justices, of sheep or oxen, they know you not. If a warrant came from the Lords of the Council to levy a hundred men, he will levy two hundred, and what with chopping in, and shutting out, he'll gain a hundred pounds by the bargain. Nay, if he be to send out a warrant upon a man's request, to have any fetched in on suspicion of felony or the like, he will write the warrant himself, and you must put two shillings in his pocket as his clerk's fee, (when, God knows, he keeps but two or three Hinds,) for his better maintenance." (*D'Ewes's Journal*, 661.)

The justice who "misuses the king's press so damnably," will remind the reader of the scene in Henry IV. where "Robert Shallow, a poor esquire of the county, and one of the king's justices of the peace," allows Sir John Falstaff to traffic in a similar manner.

"*Fal.* Come, Sir, which men shall I have?

Shal. Four, of which you please.

Bard. Sir, a word with you,—I have three pounds to free Mouldy and Bullcalf.

Fal. Go to, well.

Shal. Come, Sir John, which four will you have?

Fal. Do you choose for me.

Shal. Marry, then, Mouldy, Bullcalf, Feeble, and Shadow.

Fal. Mouldy and Bullcalf!—For you, Mouldy, stay at home still, you are past service,—and for your part, Bullcalf,—grow till you come unto it, I will none of you."

In the earlier periods of our history, to provide for the due execution of the law, and to repress the corruption of its ministers, was a task which the legislature was frequently called upon to perform. Thus, in the year 1572, a proposal was made by Sir Nicholas Bacon, the Lord Keeper, for the appointment of a commission to enquire into the administration of justice,—"I mean that the Queen's Majesty should make choice, every second or third year, of certain expert and approved persons, to whom a commission should be granted to try out and examine, by all ways and means, the offences of all such as have not seen to the due execution of the laws, according to the offices and charges committed to them by the Prince; and the offences so found and certified, to be sharply punished, without remission or redemption. Of effect much like this, and to the like end, was the visitation of the church first devised; whereof, in the beginning of it, came great good doubtless; and reason I see none, but the like good ought to follow upon like visitation made

upon temporal affairs. And the old commission of *Oyer* tended somewhat to this end. I doubt certainly, if the laws and statutes of this realm, should not indifferently, uprightly, and diligently, be put in execution, (as my trust is they shall,) especially in the great and open courts of this realm, then my burthen, I confess, is equal with the greatest, yet, for my part, I would gladly, every year, hear of and yield to such a comptroller." (*D'Ewes's Journal, p.* 194.)

At the present day we have a much surer guard against the peculation and corruption of the officers of justice, than any legislative enactments could bestow,—the force of public opinion, and the power of a free press. Were it even possible that a suitor could be found bold enough to proffer a bribe to any of our judges, the universal disgrace and odium which would attach to the receiver of it, is a sufficient safeguard against such a practice, without considering the moral character and integrity of the individuals who now preside over our courts of justice.

SIR JOHN DAVIES, AND DAME ELEANOR, HIS WIFE.

This eminent lawyer was Attorney General in Ireland, in the reign of King James I. He was also celebrated as a poet (*See Ante, p.* 49.) and a political writer. At the beginning of the year

1588, he removed from Oxford to the Middle Temple, and applied himself to the study of the law; but was more distinguished by his abilities than by the regularity of his manners. "He interrupted the quiet of the Inn by his misdemeanours, for which he was fined, and by disorders, for which he was removed from Commons." (*Life, prefixed to his Historical Tracts, p.* 2.) Anthony Wood says, "That he, being a high-spirited young man, did, upon some little provocation or punctilio, bastinado Richard Martin, afterwards Recorder of London, in the Common Hall of the Middle Temple, while he was at dinner. For which act being forthwith expelled, he retired for a time in private, lived in Oxon in the condition of a sojourner, and followed his studies, though he wore a cloak." Davies and Martin were, it seems, both poets, and the facetiousness of the latter, which used to set the Temple table in a roar, and is said to have charmed King James, probably drew upon him the indignation of his brother wit.

The reputation of Davies, as a poet, is principally founded on his work, intitled *Nosce Teipsum*, a Poem on the Immortality of the Soul, first published in 1599, in quarto. It is a performance of very considerable merit, and has passed through several editions. In a note to the edition printed with Sir John's other poetical works, in 1773, it

is said, that this poem is, "without dispute, the best that was written in Queen Elizabeth's, or even in King James the First's time, except Spenser's Faery Queen." (*See Remarks ante, p.* 49.) On the death of Queen Elizabeth, Davies accompanied Lord Hunsdon into Scotland, to congratulate King James on his accession to the throne of England. Being introduced into his Majesty's presence, the King enquired of Lord Hunsdon the names of the gentlemen who were with him; and his Lordship naming among them John Davies, who stood behind, the King immediately asked, whether he was *Nosce Teipsum?* Lord Hunsdon informed him that he was the same; upon which the King, as Wood informs us, "graciously embraced him, and thenceforward had so great favour for him, that soon after he made him his Solicitor and then his Attorney General in Ireland." In these offices he discharged his duties with great diligence and ability.

He was a member of the Irish Parliament, and, on his return to England, was returned for Newcastle-under-Line. When about to be placed in a station of high dignity, he was carried off by an apoplexy, in the night of the 7th December, 1626, in the fifty-seventh year of his age. He had supped that night with the Lord Keeper Coventry, having been previously appointed Lord Chief Justice of England, in the room of Sir Randolph

Crew. He was buried in the church of St. Martin in the Fields, where a monument was fixed on a pillar near his grave, with an inscription on it, giving him the following character:

> "Vir ingenio compto, rarâ facundiâ, oratione cum solutâ, tum numeris astrictâ, felicissimus: Juridicam severitatem morum elegantiâ, et amæniore eruditione, mitigavit: Patronus fidus, Judex incorruptus, ingenuæ pietatis amore, et anxiæ superstitionis contemptu, juxta insignis."

Sir John Davies was a very able and learned lawyer; and the pieces written by him, concerning Ireland, are extremely valuable. He was the author of an Abridgment of Sir Edward Coke's Reports, in Law French, which was translated into English after his decease, and published in 1651. His own Reports, which were first published in Law French, in folio, were also afterwards translated into English, and reduced to an octavo size.

Sir John's lady was a very singular character, and dealt much in prophecies. An account of her predictions was published in 1649, in 4to. under the title of "Strange and Wonderful Prophecies." She was reported to have foretold the death of her husband. Anthony Wood, speaking of the time of Sir John Davies's death, says, "It was then commonly rumoured, that his prophetical lady had

foretold his death in some manner, on the Sunday going before. For, while she sat at dinner by him, she suddenly burst out into tears; whereupon he asking her what the matter was, she answered, 'Husband, these are your funeral tears;' to which he made reply, 'Pray, therefore, spare your tears now, and I will be content that you shall laugh when I am dead.'"

Lady Davies also foretold the death of Archbishop Laud; but appears to have been mistaken as to the time. "She had before spoken something unluckily of the Duke of Buckingham, importing that he should not live till the end of August, which raised her to the reputation of a cunning woman amongst the ignorant people; and now she prophesied of the new Archbishop, that he should live but few days after the fifth of November; for which, and other prophesies of a more mischievous nature, she was brought into the Court of High Commission; the woman being grown so mad, that she fancied the spirit of the Prophet Daniel to have been infused into her body. And this she grounded on an anagram which she made of her name, *viz.* ELEANOR DAVIES: REVEAL O DANIEL: and though the anagram had too much by an L, and too little by an S; yet she found *Daniel* and *Reveal* in it, and that served her turn. Much pains was taken by the court to dispossess her of this spirit; but all would not

do, till Lamb, then Dean of the Arches, shot her through and through, with an arrow borrowed from her own quiver; for whilst the Bishops and Divines were reasoning the point with her out of Holy Scripture, he took a pen into his hand, and at last hit upon this excellent anagram, *viz.* DAME ELEANOR DAVIES: NEVER SO MAD A LADIE: which having proved to be true by the rules of art, 'Madam,' said he, 'I see you build much on anagrams, and I have found one which I hope will fit you.' This said, and reading it aloud, he put it into her hands in writing, which happy fancy brought that grave court into such a laughter, and the poor woman thereupon into such a confusion, that afterwards she either grew wiser, or was less regarded."

This was certainly the most sensible way of animadverting on the poor lady's infirmities; but to this course unfortunately her judges did not confine themselves. "She was prosecuted in the High Commission Court, particularly for what was called 'an enthusiastical petition to King Charles;' and was treated with great rigour and cruelty. She was fined three thousand pounds, and closely imprisoned three years in the Gatehouse, Westminster. She is also said to have been confined several years in Bethlem Hospital, and in the Tower of London; and she complained that, during part of her imprisonment, she was not

allowed the use of a Bible, nor permitted to have the attendance of a female servant." (*Biogr. Brit. vol.* iv.)

IDENTIFICATION OF STOLEN GOODS.

Webs of cloth and wearing apparel are articles, the identity of which it is often difficult to establish. A remarkable instance of this occurred some years ago, in a trial of one Webster, on the north circuit, for house-breaking and theft. The girl, whose chest had been broken open, and whose clothes had been carried off, swore to the only article found in the prisoner's possession, and produced, viz. a white gown, as being her property. She had previously described the colour, quality, and fashion of the gown, and they all seemed to correspond with the article produced. The house-breaking being clearly proved, and the goods, as it was thought, distinctly traced, the proof was about to be closed for the prosecutor, when it occurred to one of the jury to cause the girl to put on the gown. This appeared rather a whimsical proposal, but it was agreed to by the Court, when, to the surprise of every one present, it turned out, that the gown which the girl had sworn was hers, which corresponded with her description, and which she said she had used only a short time before, would not fit her person. She then examined it more minutely, and at length

said it was not her gown, though almost in every respect resembling it. The prisoner was of course acquitted; and it turned out afterwards, that the gown produced belonged to another woman, whose house had been broken into about the same period, by the same person, but of which no evidence had at that time been obtained. (*State Trials, vol.* xix. *p.* 494.)

THE OPINION OF A FRENCH LAWYER ON AN ENGLISH CASE.

The opulent commercial family of Courten, about the middle of the 17th century, were ruined in consequence of the piratical seizure of their vessels by the Dutch. (*Biogr. Britt. vol.* iv.) Letters of Reprisals were in consequence granted by the English Government, in 1665, to George Carew, Administrator of the goods and chattels of Sir William Courten, &c. which were afterwards annulled by an express article in the Treaty of Breda, in 1667. The Chancellor Hyde, and Finch, afterwards Earl of Nottingham, decided that this revocation was good in law; and it was accordingly decreed in the Court of Chancery that the letters were void, that they ought to be resigned, and the record of them erased. This order of the Court was made absolute, February 27, 1682, when tipstaves and messengers being sent from day to day, to apprehend Carew, dead

or alive, his personal liberty became insecure; he therefore fled, with the letters in his possession, to France, and took up his residence at Paris, "until the people of England came to their right wits and senses again." To convince the English Courts of their error, he here, it appears, submitted his case to a French counsellor, who did not scruple to advise upon it, and who pronounced the following very curious

Opinion.

J'ay recu la vôtre, avec copie du procez de *scire facias*, au nom du Roy, et la réponse à icelle, tous deux en Latin, et l' ordre de la Chancelerie ensuivie, datée le 26 de May, 1682, et aye auprès de moy la copie des Lettres Patentes pour Représailles contre les Hollandois, pour 151, 612 livres sterlins, translaté en François. J'ay consulté cette affaire avec les premièrs conseillers du Parlement de Paris, lesquels sont d'avis *qu'il est contre la justice naturelle et la constitution du Gouvernement d' Angleterre, que la même Cour de Judicature d'où les Lettres Patentes sont issues, les pourroit abroger et anuller, sans premièrement faire satisfaction aux personnes injuriées ou endommagées, et ils tiennent pour fort deshonorable à aucun Prince, ou sujets, de chercher relief contre leur propres actes, lesquels sont en leur propre pouvoir d' accomplir*; LE ROY *de* FRANCE *ven-*

droit son lit de dessous soy, plutôt que de courir le deshonneur et reproche d'une telle action, si reflectant contre tous Princes Souverains.

FRANCOIS PERENOTT.
Paris, 16 *Dec.* 1682.

A CROSS-EXAMINATION.

On the celebrated trial of Elizabeth Canning, Mr. Willes, afterwards Solicitor-General in 1766, made a Judge of the King's Bench in 1767, and ultimately raised to the dignity of Chief Justice, thus cross-examined one of the witnesses for the prisoner.

"What time did she (Elizabeth Canning) come?—About twelve o'clock at noon.

Did anybody come with her that day?—No, nobody.

Was she in perfect health?—I never saw her better, as I know of.

What had you for dinner?—Some of a cold shoulder of mutton and potatoes, which was dressed the Sunday before.

Did she eat a hearty dinner?—She eat as hearty as she could; she seemed to eat as hearty as I did.

This being new year's day, what did you give her to drink?—She drank some ten-shilling beer, which I had in the house. I was at work in the afternoon.

Does your wife drink tea in the afternoon?—

She generally does, whether she has company or not.

Have you seen your niece drink tea?—I have.

Do you think your wife and she had tea that afternoon?—I do really believe they had.

Does your wife generally have bread and butter, or toast with her tea, or not?—She generally chuses toast and butter.

What time did you return home from work?—About seven in the evening.

What had you for supper?—We had some of a sirloin of beef roasted.

Did your niece eat of that?—She eat a small quantity of that, but could not eat much.

What did she drink after that?—She drank a small quantity of ten-shilling beer."

This cross-examination was ridiculed by Foote in a farce, in the performance of which he exercised his talent of mimicry by a very successful exhibition of Mr. Willes's peculiarity of voice and manner.

In vindication of Willes, Mr. Malone has observed, (in his Inquiry into the authenticity of the Papers, &c. which, in 1795, were published as the writings of Shakspeare, Queen Elizabeth, and the Earl of Southampton,) "Persons who are not conversant with legal subjects, or the true object

of lawyers in their examination of evidence, are frequently surprised at minute questions put to witnesses, which they think either vexatious or impertinent; and on such occasions, the well-known question which a late admired comic actor introduced into one of his pieces, and which he rendered still more ridiculous by imitating the thin and stridulous voice of an eminent barrister, who was afterwards raised to the Bench, 'Pray, now let me ask you, was,—the—toast buttered on *both* sides?' is often mentioned with much satisfaction and applause by those who have attended more to the humour of the theatre, than the investigation of truth.—But the judicious lawyer, when he asks, not precisely such questions as the English Aristophanes has invented for him, but, in the case (we will suppose) of a disputed will,—whether the testator, when he made and published it, was sitting up in his bed, or in an arm chair;—what was the size or form of the room,—how many persons were present,—who lighted the candles, or furnished the wax with which it was sealed? &c. perfectly understands what he is about; and, in cases of fiction or fraud, the event often proves the propriety of such an examination; for by the answers given to these questions, compared with the testimony of others, and the real fact, the instrument set up is quickly overthrown." (*State Trials, vol.* xix. *p.* 475.)

LORD CHIEF JUSTICE WILLES.

"Chief Justice Willes," says Miss Hawkins, in her Memoirs, (*vol.* ii. *p.* 254,) "was a man of so little personal decorum, that he was perpetually offending against the respect due to his office. He would play cards at the public rooms at watering places; and one night, when so engaged, he was extremely annoyed by a young barrister, who feigning himself intoxicated, stood by the table, looked over his cards, and was so troublesome, that at length Willes spoke sharply to him. 'Sir,' said he, pretending to stagger, 'I—beg pardon; but I wanted to improve in playing whist; so, so I came to look over—you; for if—if I, I, I am not mistaken, Sir,—you are *a judge.*'" To this anecdote we may subjoin the account of his Lordship given by Horace Walpole, in his "Memoirs."

"Lord Chief Justice Willes was designed for Chancellor. He had been raised by Sir Robert Walpole, though always browbeaten by haughty Yorke, and hated by the Pelhams, for that very attachment to their own patron; as Willes's nature was more open, he returned their aversion with little reserve. He was not wont to disguise any of his passions.—That for gaming was notorious; for women, unbounded. There was a remarkable story current, of a grave person coming

to reprove the scandal he gave, and to tell him, that the world talked of one of his maid-servants being with child.—Willes said, 'What is that to me?' The monitor answered, 'Oh, but they say, it is by your Lordship.' 'And what is that to you?' He had great quickness of wit, and a merit that would atone for many foibles; his severity to, and discouragement of that pest of society, attornies; hence his court was deserted by them, and all the business they could transport carried into the Chancery, where Yorke's filial piety would not refuse an asylum to his father's profession." (*Memoirs, vol.* i. *p.* 78.)

LORD COWPER AND RICHARD CROMWELL.

"Charles Yorke told this fact. His father, Lord Hardwicke, was in the Court of Chancery when Lord Cowper was hearing a cause, in which Richard Cromwell had some concern. The counsel made very free and unhandsome use of his name, which offending the good feeling of the Chancellor, who knew that Cromwell must be in court, and at that time a very old man, he looked round, and said, 'Is Mr. Cromwell in court?' On his being pointed out to him in the crowd, he very benignly said, 'Mr. Cromwell, I fear you are very incommodiously placed where you are: pray come and take a seat on the bench by me.' Of course no more hard speeches were uttered

against him. Bulstrode Whitelock, then at the bar, said to Mr. Yorke, 'This day so many years ago, I saw my father carry the great seal before that man through Westminster Hall.'" Such is the version of this story given by Miss Hawkins. (*Memoirs, vol.* ii. *p.* 254.) It is thus given in the *Biographia Britannica*: "In 1705, he (Richard) lost his only son, Oliver, who died on the 11th May, having never married. By this event, Richard became entitled to a life-estate in the manor of Hursley, which, having been part of his wife's jointure, had devolved to Oliver, in right of his mother. In consequence of his son's decease, the old gentleman sent his youngest daughter to take possession of the estate, which she accordingly did; but not, it seems, with a view of surrendering it to her father. She and her sisters, it is said, forgetting their duty, and even the dictates of humanity, refused to give it up to him, alleging that he was superannuated, and proposing to allow him a small yearly sum. This conduct was the more criminal, as he had ever been very fond of his children, and had treated them with the greatest tenderness and affection. The advanced age of Richard did not prevent him from behaving on this occasion with becoming spirit. He scorned to submit to the award of his daughters, and a process at law was the consequence. As he was obliged to appear in person in court, his sister,

Lady Fauconberg, sent her coach and equipage to conduct him thither. When he came, the judge, remembering his former elevation, conducted him into an apartment, where refreshments were provided for him; and, on his being brought into court, ordered that he should be accommodated with a chair, and that he should sit covered. One of the counsel on the other side seeming disposed to object to this indulgence, the liberal-minded magistrate immediately replied, 'I will allow of no reflections to be made; but that you go to the merits of the cause.' In conclusion, a decree was given in favour of Richard, accompanied with some severe strictures on the shameful treatment he had received from his daughters. It is understood, that the judge was commended by Queen Anne for the proper attention he had shewn to a man who had once been a sovereign." (*Biographia Britannica, vol.* iv.)

It is added in a note, that, according to the Earl of Egmont and Mr. Hewling Luson, the judge before whom the cause was tried was Lord Cowper; but that Mr. Granger says, it was Lord Chief Justice Holt.

MR. JUSTICE BURNET.

Thomas Burnet, afterwards Sir Thomas Burnet, and one of the Justices of the Court of Common Pleas, was the third son of the celebrated

Bishop of Salisbury. Having received an academical education at Oxford, he spent some time on the Continent, and on his return, entered his name on the books of the Temple as a student at Law. Like Sir John Davies, of whose youthful life we have given some account, he became remarkable for the wildness and irregularity of his conduct, to which frequent allusions are made in the satirical publications of the day. Thus in Arbuthnot's witty *Notes and Memorandums of the six days preceding the death of a Right Reverend Divine,* we have the following allusion to Mr. Justice Burnet. "Order the family to come up stairs at seven.—Resolved to preach before them extempore, * * *. Family comes up.—Survey them with delight.—The damsel Jane has a wicked eye. Robin seems to meet her glances: unsanctified vessels! children of wrath! * * *. Look again at Jane.—A tear of penitence in her eye. Sweet drops! Grace triumphs! Sin lies dead! *Wish Tom were present.* He might be reformed. Consider how many sermons it is probable Tom hears in one year. Afraid not one. Alas the Temple! alas the Temple! The law eats up divinity; it corrupts manners, rains contentions amongst the faithful, feeds upon poor vicarages, and devours widows' houses without making long prayers. Alas the Temple! never liked that place since it harboured Sacheverell, &c." It was even suspected

that our young student was one of the Mohocks, of whom so frequent mention is made in the Spectator, and whose achievements excited so much terror. "Young Davenant was telling us," says Swift in his Journal to Stella, "how he was set upon by the Mohocks, and how they ran his man through with a sword. It is not safe being in the streets at night. The Bishop of Salisbury's son is said to be of the gang. They are all Whigs. A great Lady sent to me to speak to her father and to Lord Treasurer to have a care of them, and to be careful likewise of myself, for she heard they had malicious intentions against the ministers and their friends. I know not whether there be anything in this, though others are of the same opinion." Notwithstanding his dissipation, Mr. Burnet found time to become a very frequent political writer, and in 1712 and 1713, produced no less than seven pamphlets, in defence of the principles and conduct of the Whigs. As he grew older, Mr. Burnet abandoned his youthful extravagances. His father, the Bishop, observing him one day uncommonly grave, enquired the subject of his meditations. "A greater work," replied the son, "than your Lordship's History of the Reformation." "What is it, Tom?" "My own *reformation*, my Lord." "I shall be heartily glad to see it," said the Bishop, "but I almost despair of it." Upon the accession of the Bruns-

wick family, he addressed a letter to the Earl of Halifax, *On the necessity of impeaching the late ministry*, which he followed up with a humorous satire upon Harley, entitled, *A second Tale of a Tub, or The History of Robert Powell the Puppet-show-man.* His next work was a *Character of the Right Reverend Father in God, Gilbert, Lord Bishop of Sarum*, and in the same year he wrote, in conjunction with Duckit, a Travestie of the first book of Homer, under the title of *Homerides*, a performance which secured them a joint place in the Dunciad:

"Behold yon pair, in strict embraces join'd;
How like in manners, and how like in mind;
Equal in wit, and equally polite,
Shall this a Pasquin, that a Grumbler write;
Like are their merits, like rewards they share;
That shines a Consul, this, Commissioner."

Book iii. *v.* 179.

Having obtained the appointment of Consul at Lisbon, he resided at that place several years, and during his stay, had a serious dispute with Lord Tyrawley the Ambassador: Mr. Burnet's mode of mortifying his Lordship was ingenious and singular. Employing the same tailor, he learned what suit Lord Tyrawley intended to wear on the birthday, and provided the same as liveries for his servants, appearing himself in a plain suit. On

his return to England, he resumed the profession of the law, and in the year 1723, published the first volume of his father's History of his Own Times. In 1736, he was called to the degree of Sergeant, and in 1741, on Fortescue Aland being appointed Master of the Rolls, succeeded him as one of the puisne Judges of the Common Pleas, in which Court he continued till his death in 1753. "He left behind him the character of an able and upright Judge, a sincere friend, a sensible and agreeable companion, and a munificent benefactor to the poor." (*See the Notes to the Life of Bishop Burnet, in the Biogr. Brit.*)

CHARACTER OF A PETTIFOGGER.

"He promotes quarrels, and in a long vacation his sport is to go a fishing with the penal statutes. He is a vestryman in his parish, and easily sets his neighbours at variance with the vicar, when his wicked counsel on both sides is like weapons put into men's hands by a fencer, by which they get blows, he money. His honesty and learning procure him the office of Under-Sheriff; which having thrice obtained, he does not fear the Lieutenant of the Shire; nay more, he fears not God. His pen is the plough, and his parchment the soil, whence he reaps both corn and curses. He is an earthquake that willingly will let no ground lie in quiet. Broken titles make him whole:—to have

half the country break their bonds were the only liberty of conscience. He would wish that no neighbour of his should pay his tithes duly, if such suits held continual plea at Westminster. He cannot away with the reverend service in our church, because it ends with *the Peace of God.*" (*Overbury's Characters.*)

COKE'S ADDRESS ON BEING ELECTED SPEAKER OF THE HOUSE OF COMMONS.

"Your Majestie's most loving subjects, the Knights, citizens, and burgesses of the House of Commons, have nominated me, Your Grace's poor subject and servant, to be their Speaker. This their nomination hath hitherto proceeded that they present me to speak, before your Majesty; yet this their nomination is only as yet a nomination and no election, until your Majesty giveth allowance and approbation. For as in the heavens a star is but *opacum corpus* until it have received light from the sun, so stand I *corpus opacum*, a mute body, until your Highness's bright shining wisdom hath looked upon me and allowed me. How great a change this is, to be the mouth of such a body as your whole Commons represent, to utter what is spoken, *Grandia Regni*, my small experience, being a poor professor of the law, can tell. But how unable I am to do this office, my present speech doth tell, that of a number in this House I am most unfit. For amongst them are

many grave, many learned, many deep wise men, and those of ripe judgments: but I am untimely fruit, not yet ripe, but a bud, scarcely blossomed: so, as I fear your majesty will say, *Neglectâ frugi eliguntur folia:* amongst so many fair fruit ye have plucked a shaking leaf. If I may be so bold as to remember a speech, which I cannot forget, used the last Parliament in your Majesty's own mouth, many come hither ad consulendum, qui nesciunt quid sit consulendum, a just reprehension to many as to myself also, an untimely fruit, my years and judgment ill befitting the gravity of this place. But, howsoever I know myself the meanest, and inferior unto all that ever were before me in this place, yet in faithfulness of service and dutifulness of love, I think not myself inferior to any that were ever before me. And amidst my many imperfections, yet this is my comfort, I never knew any in this place, but if your majesty gave them favour, God, who called them to the place, gave them also the blessing to discharge it."

The Lord Keeper, having received instructions from the Queen, answered him.

"Mr. Solicitor, Her Grace's most Excellent Majesty hath willed me to signify unto you, that she hath ever well conceived of you since she first heard of you, which will appear, when her Highness elected you from others to serve her-

self. But by this your modest, wise, and well-composed speech, you give her Majesty further occasion to conceive of you; by endeavouring to deject and abase yourself and your desert, you have discovered and made known your worthyness and sufficiency to discharge the place you are called to. And whereas you account yourself *corpus opacum*, her Majesty, by the influence of her virtue and wisdom, doth enlighten you, but much thanketh the Lower House, and commendeth their discretion in making so good a choice, and electing so fit a man. Wherefore now, Mr. Speaker, proceed in your office, and go forward to your commendation as you have begun. (*D'Ewes's Journal*, 459.)

LORD MANSFIELD'S CONDUCT DURING THE RIOTS.

The following account of the riots of 1780, and the conduct of Lord Mansfield on that occasion, is given by Miss Hawkins, *ex relatione H. Hawkins.*

"On the day when the riots began, I was in Westminster Hall, and the tumult was so great, that Mr. Dunning, who was then speaking in the Court of King's Bench, was unable to go on; and as the Hall was then filling with an immense crowd, who were making their way to block up all the avenues to the House of Lords, the Court adjourned. I afterwards saw the mob in irregular

procession marching up Charing Cross, and driving back every nobleman's carriage that was on its way to the House. Some noblemen, who were thought to be friendly to the opinions of the mob, were treated more gently than the rest; Lord Fortescue, if I mistake not, was taken out of his carriage by them, and kissed by the old women who had mixed with the throng. The Lord Chancellor only met with sarcastic pity; the mob crying out not to touch his head, in a way that showed that they would insinuate that that was his weakest part. The next morning, Mr. Justice Willes, in his charge to the grand jury, mentioned that he had been attacked in his way to the Hall. From this time all was confusion and uproar, and the subsequent events have now become part of the history of the period; but it should be remembered, that the prosecutions of the offenders, which took place as soon as peace and social order were in any degree restored, were conducted with so much candour and liberality, as to produce the applause of all descriptions of persons; the management of these was chiefly, if not entirely, confided to Mr. Howarth, of whom mention has been already made. Of this gentleman the catastrophe was melancholy; he was fond of going on the water, and in spite of all the dictates of prudence, he would venture in a boat, which he knew at that time was not 'sea-worthy.' The event

may be anticipated; in one of his excursions the boat filled with water, and he perished!

"We still had no idea of further danger, and should have gone out, had not the coachman come in to say, that a lady, who lived very near us, had been stopped in her carriage by the mob at Charing Cross, and compelled to huzza for Lord George, and cry out, 'No Popery,' on pain of being dragged out.

"The next day we heard that the guards were preparing for duty; but all reliance in them was destroyed, by its being said that they were heard to declare, that if ordered to fire, it should be over the heads of the mob that they would discharge their pieces.

"The Westminster Justices now began an attendance in rotation at Guildhall, and our anxiety had its intermissions, till a day when my father could not leave his station, even for dinner. His servant went to and fro between him and us, and our hearts sunk, when after waiting till late in the evening, in the most painful suspense, we learnt that we must not expect him till the following morning.

"The cause of his detention was a message from Lord Mansfield, requesting him to come immediately to him in Bloomsbury Square, as he had reason to apprehend that his house would be

attacked.* My father went thither directly on foot attended by constables, and found his Lordship in the most tumultuous state of feelings, and utterly at a loss to know what to do. The mob had given notice of their intention to visit him, and a great concourse of people was assembling as spectators of the impending mischief. Sir J. was cool and firm: he advised sending for a military force; and while this was carrying into effect, Lord Mansfield asked him to go to the Archbishop of York, who lived in the adjoining house, and was under the same terror. The Archbishop, however, was more himself.

"The guards came; and there is little doubt that the attack would soon have been repelled, but Lord Mansfield insisted on their not remaining on the spot, but being ready when summoned.

"My father remonstrated; he represented the inconsistency of such a plan, and the impossibility there would be of making any armed force of use, when not immediately at hand; but fear is very deaf, and his Lordship was, I may say, obstinate. He insisted that the guards should be stationed at the vestry of St. George's church, and though

* It should, however, be remembered, that Lord Mansfield did not really stand in need of my father's assistance, as the Lord Chief Justice of the King's Bench is a magistrate in any county in which he is present.

this placed them considerably beyond the diagonal line of Bloomsbury Square, Lord M. saw no inconvenience. He *would* be obeyed, even though the commanding officer protested against a proceeding so absurd.

"He was obeyed; and the result is well known to those who had the misfortune to witness the scenes of this time. The mob kept their promise, and, in a space of time inconceivably short, his house had only its walls standing. One of the young ladies of the family staid long enough to see her grand piano-forte thrown into a bonfire, made of the furniture; and such was the *noble spirit* of these *Protestant heroes*, that a large silver tankard was thrown into the blaze with a considerable quantity of guineas in it. A cry was then set up, from the tone and temper of which it was conjectured, that *all* the mob were not of the same description; the audible words were, 'If there be any *females* in the house, send them away:' having given time for the execution of this charitable order, and consequently the evacuation of the house, they proceeded with the work of demolition." (*Miss Hawkins's Memoirs.*)

"A lady walking with Mr. Bacon in Gray's Inn Walks, asked him, whose that piece of ground lying next under the walls was? He answered,

'theirs.' Then she asked him, If these fields beyond the walls were theirs too? He answered, 'Yes, Madam, those are ours, as you are ours, to look on, and no more.'" (*Bacon's Apothegms.*)

THE LAWYER.

"The law my calling is,
My robe, my tongue, my pen,
Wealth and opinion gaine,
And make me judge of men.
The knowne dishonest cause
I never did defend,
Nor spunne out sutes in length,
But wisht and sought an end,
Nor counsaile did bewray,
Nor of both parties take,
Nor ever tooke I fee
For which I never spake."
(*Maynard's* XII *Wonders of the World,* 1611.)

CHARACTER OF A REVEREND JUDGE.

"He desires to have his greatness measured only by his goodness. His care is, to appear such to the people as he would have them to be, and to be himself such as he appears: for virtue cannot seem one thing and be another. He knows that the hill of greatness yields a most delightful prospect; but also that it is most subject to lightning and thunder; and that the people, as in

ancient tragedies, sit and censure the actions of those in authority; he shapes his own, therefore, that they may be far above their pity. He wishes there were fewer laws, so they were better observed. Neither hope nor despair of preferment can draw him to wrong any man. He thinks himself most honourably seated, when he gives mercy the upper-hand. If his sovereign call him to a higher place, he then delivers his mind plainly and freely, knowing there is no place where dissembling ought to predominate less than in a prince's counsel. Thus honour keeps pace with him to the grave." (*Sir Thomas Overbury's Characters.*)

LORD KEEPER NORTH AND THE RHINOCEROS.

"To shew that his Lordship's court enemies, the Earl of Sunderland in particular, were hard put to it to find, or invent, something to report, tending to the diminution of his character, I shall give an account of the most impudent buffoon lie raised upon him, and with brazen affirmations of truth to it, dispersed from the court one morning, that ever came into fools' heads; and Satan himself would not have owned it for his legitimate issue. It fell out thus: a merchant of Sir Dudley North's acquaintance had brought over an enormous rhinoceros, to be sold to shew-men for profit. It is a noble beast, wonderfully armed by nature for

offence, but more for defence, being covered with impenetrable shields, which no weapon would make any impression upon; and a rarity so great, that few men in our country have, in their whole lives, opportunity to see so singular an animal. This merchant told Sir Dudley North, that if he, with a friend or two, had a mind to see it, they might take the opportunity at his house, before it was sold. Hereupon Sir Dudley North proposed to his brother, the Lord Keeper, to go with him upon this expedition; which he did, and came away exceedingly satisfied with the curiosity he had seen. But whether he was dogged to find out where he and his brother housed in the city, or flying fame carried an account of the voyage to court, I know not; but it is certain, that the very next morning a bruit went from thence all over the town, and (as factious reports used to run,) in a very short time, *viz.* that his Lordship rode upon the rhinoceros; than which a more infantine exploit could not have been fastened upon him. And most people were struck with amazement at it, and divers ran here and there to find out whether it was true or no. And, soon after dinner, some lords and others, came to his Lordship to know the truth from himself; for the setters of the lie affirmed it positively, as of their own knowledge. That did not give his Lordship much disturbance, for he expected no better from his

adversaries. But that his friends, intelligent persons, who must know him to be far from guilty of any childish levity, should believe it, was what roiled him extremely; and much more, when they had the face to come to him to know if it were true. I never saw him in such a rage, and to lay about him with affronts, (which he keenly bestowed upon the minor courtiers that came on that errand,) as then; for he sent them away with fleas in their ears; and he was seriously angry with his own brother, Sir Dudley North, because he did not contradict the lie in sudden and direct terms; but laughed, as taking the question put to him for a banter, till, by iterations, he was brought to it. For some lords came, and because they seemed to attribute somewhat to the avowed positiveness of the reporters, he rather chose to send for his brother to attest, than to impose his bare denial: and so it passed. And the noble Earl with Jeffries and others of that crew, made merry, and never blushed at the lie of their own making; but valued themselves upon it, as a very good jest." (*Life of North, vol.* ii. *p.* 239.)

TRIAL AND EXECUTION OF LAWRENCE, EARL FERRERS.

This unfortunate nobleman was tried by his peers in Westminster Hall, in full Parliament, on the 16th April, 1760, and two following days, for the

murder of John Johnson. Robert, Lord Henley, Lord Keeper of the Great Seal, presided as Lord High Steward, and the Attorney General, Charles Pratt, Esq. afterwards Lord Camden, conducted the prosecution.

The facts were shortly as follow:—Lord Ferrers had been separated from his lady, and Johnson had been appointed receiver of his Lordship's estates. The causes assigned for his enmity to the deceased were very inadequate; he charged Johnson with colluding secretly with his adversaries, and being in the interest of certain fancied enemies. Labouring under these delusions, he desired Johnson to come to his house at Stanton, in Leicestershire, on Friday the 18th January, 1760. On his arrival, his Lordship ordered him into the parlour, where they both entered together, and the door was immediately locked on the inside. After the best part of an hour, a maid-servant at the kitchen-door, heard his Lordship say, "Down upon your knees; your time is come; you must die;" and presently after, heard a pistol go off. In a short time, Lord Ferrers came out of the room, and ordered his servants to assist Mr. Johnson to bed. He then sent for a surgeon, and had the patient properly attended to; and, during his stay in the house, enquired anxiously as to the progress of the symptoms; but declared, that he

was not sorry for it, and that it was a premeditated act. He said, he was astonished the bullet should remain in the body, for he had made a trial with the pistol, and it pierced through a board an inch and a half thick. He would afterwards, in the presence of several persons, have dragged Mr. Johnson, wounded as he was, out of bed, had he not confessed himself a villain, to pacify his Lordship's rage. The surgeon procured six or seven armed men, and removed the patient, without his Lordship's knowledge, and soon after the sufferer died.

The next measure was to secure his Lordship, which was no easy exploit. His house was surrounded on the Saturday morning by a number of armed men, and he stood a siege of four or five hours, parleying at times from the garret-windows. He was here told by one of the besiegers, that Johnson was dead, to which he replied, "You are a lying scoundrel, God damn you!" He continued in the house, till he thought he had an opportunity of escaping through the garden; but there he was discovered by one Cutler, a collier, who was a bold man, and determined to take him: he marched up to him, and though his Lordship was armed with a blunderbuss, two or three pistols, and a dagger, he submitted to the intrepid collier without the least resistance.

In his defence, the prisoner pleaded insanity,

and examined a great number of witnesses, who deposed, that they had always considered him to be a madman. It was also in evidence, that his uncle, the preceding Lord Ferrers, and several of his relations, had been confined as lunatics. Hardly a doubt, indeed, can be entertained, that this unfortunate peer laboured under the same malady; but he urged this plea with so much ability and self-possession on his trial, that those very qualilities, though certainly not inconsistent with madness, seem to have overthrown, or weakened his defence. The Solicitor General, the Honourable Charles Yorke, replied for the Crown, and their Lordships unanimously found Earl Ferrers guilty of the murder.

His conduct at his execution deserves to be mentioned for its singular firmness and composure. He was dressed in a suit of light clothes, embroidered with silver, and observed to Mr. Sheriff Vaillant, who accompanied him, "You may, perhaps, Sir, think it strange to see me in this dress, but I have my particular reasons for it."* The procession from the Tower to Tyburn occupied nearly three hours; during the whole of which time he appeared quite easy, and his deportment greatly affected the spectators. He had begged to suffer where his ancestor, the Earl of Essex,

* It is supposed to have been his marriage suit.

had suffered; but this request was denied. On being asked, if he had any thing to say on the subject of religion, he replied, That he did not think himself at all accountable to the world for his sentiments on religion; but that he had always believed in, and adored one God, the Creator of all things; that whatever his notions were, he had never propagated them, or endeavoured to gain persons to his persuasion; that all countries and nations had a form of religion, by which the people were governed, and that whoever disturbed them in it, he looked upon him as an enemy to society; that he could never believe that faith alone will save mankind, so that if a man, just before he dies, should say only, "I believe," that that alone will save him.

The landau being now advanced to the place of execution, his Lordship alighted from it, and ascended the scaffold, which was covered with black baize, with the same composure and fortitude of mind he had enjoyed from the time he left the Tower; where, after a short stay, Mr. Humphries asked his Lordship if he chose to say prayers? which he declined; but upon his asking him, if he did not choose to join with him in the Lord's Prayer? he readily answered, He would, for he always thought it a very fine prayer; upon which they knelt down together upon two cushions covered with black baize, and his Lordship, with

an audible voice, very devoutly repeated the Lord's Prayer, and afterwards, with great energy, the following ejaculation, "O God, forgive me all my errors,—pardon all my sins."

His Lordship then rising, took his leave of the Sheriffs and the Chaplain; and after thanking them for their many civilities, he presented his watch to Mr. Sheriff Vaillant, which he desired his acceptance of; and signified his desire, that his body might be buried at Breden or Stanton, in Leicestershire.

His Lordship then called for the executioner, who immediately came to him, and asked him forgiveness; upon which his Lordship said, "I freely forgive you, as I do all mankind, and hope myself to be forgiven." He then intended to give the executioner five guineas, but by mistake, giving it into the hands of the executioner's assistant, an unseasonable dispute ensued between those unthinking wretches, which Mr. Sheriff Vaillant instantly silenced.

The executioner then proceeded to do his duty, to which his Lordship with great resignation submitted.—His neckcloth being taken off, a white cap, which his Lordship had brought with him in his pocket, being put upon his head, his arms secured by a black sash from incommoding himself, and the cord put round his neck, he advanced by three steps, upon an elevation in the

middle of the scaffold, where part of the floor had been raised about eighteen inches higher than the rest, and, standing under the cross-beam which went over it, covered with black baize, he asked the executioner, "Am I right?"—Then the cap was drawn over his face; and then, upon a signal given by the Sheriff, (for his Lordship, upon being asked before, declined giving one himself,) that part upon which he stood instantly sunk down from beneath his feet, and left him entirely suspended; but not having sunk so low as was intended, it was immediately pressed down, and levelled with the rest of the floor.

For a few seconds his Lordship made some struggles against the attacks of death, but was soon eased of all pain by the pressure of the executioner.

From the time of his Lordship's ascending upon the scaffold, until his execution, was about eight minutes; during which his countenance did not change, nor his tongue falter:—the prospect of death did not at all shake the composure of his mind.

Whatever were his Lordship's failings, his behaviour in these his last moments, which created a most awful and respectful silence amidst the numberless spectators, cannot but make a sensible impression upon every human breast.

The accustomed time of one hour being past, the coffin was raised up, with the greater decency

to receive the body, and being deposited in the hearse, was conveyed by the sheriffs, with the same procession, to Surgeons' Hall, to undergo the remainder of the sentence, (viz. dissection.) Which being done, the body was on Thursday evening, the 8th of May, delivered to his friends for interment.

He was privately interred at St. Pancras, near London, in a grave dug 12 or 14 feet deep, under the belfry.—(*State Trials, vol.* xix. *p.* 886.)

SCRIBLERUS'S REPORTS.

The following admirable *jeu d'esprit* is, perhaps, too well known to require its republication; but its humour and wit will not allow us to omit it. It is probably the sole composition of Mr. Fortescue Aland, the friend of Pope, afterwards one of the Puisne Judges of the Common Pleas and Master of the Rolls.

A SPECIMEN OF SCRIBLERUS'S REPORTS.

Stradling versus *Stiles.*

Le report del case argue en le commen banke devant touts les Justices de mesme, en le banke en le quart an du raygne de Roy Jacques, entre Matthew Stradling, Plant. et Peter Stiles, Def. en un action propter certos equos coloratos, anglicé, pied horses port. per le dit Matthew vers le dit Peter.

Le recitel del Case.

"Sir John Swale, of Swale Hall, in Swale Dale fast by the river Swale, Kt. made his last Will and Testament. In which, among other bequests, was this, viz. Out of the kind love and respect that I bear unto my much honoured and good friend, Mr. Matthew Stradling, gent. I do bequeath unto the said Matthew Stradling, gent. all my black and white horses.

"The testator had six black horses, six white horses, and six pied horses.

Le Point.

"The debate, therefore, was, whether or no the said Matthew Stradling should have the said pied horses by virtue of the said bequest.

Pour le Pl.

"Atkins aprentice pour le pl. Moy semble que le pl. recovera. And first of all it seemeth expedient to consider what is the nature of horses, and also what is the nature of colours, and so the argument will consequently divide itself in a two-fold way, that is to say, the formal part, and substantial part. Horses are the substantial part, or thing bequeathed: black and white the formal or descriptive part.

"Horse, in a physical sense, doth import a cor-

tain quadruped or four-footed animal, which, by the apt and regular disposition of certain proper and convenient parts, is adapted, fitted, and constituted for the use and need of man. Yea, so necessary and conducive was this animal conceived to be to the behoof of the Commonweal, that sundry and divers acts of Parliament have from time to time been made in favour of horses. First Edw. VI. makes the transporting of horses out of the kingdom, no less a penalty than the forfeiture of 40*l.*; 2nd and 3rd of Edward VI. takes from horse-stealers the benefit of their clergy.

"And the Statutes of the 27th and 32nd of Hen. VIII. condescend so far as to take care of their very breed. These our wise ancestors prudently foreseeing, that they could no better take care of their own posterity, than by also taking care of that of their horses.

"And of so great esteem are horses in the eye of the common law, that when any Knight of the Bath committeth any great and enormous crime, his punishment is to have his spurs chopt off with a cleaver, being, as Master Bracton well observeth, unworthy to ride on a horse. Littleton, Sect. 315, saith, 'If tenants in common make a lease reserving for rent a horse, they shall have but one Assize, because, saith the book, the law will not suffer a horse to be severed.' Another argument

of what high estimation the law maketh of a horse.

"But as the great difference seemeth not to be so much touching the substantial part, horses, let us proceed to the formal or descriptive part, viz. what horses they are that come within this bequest.

"Colours are commonly of various kinds, and different sorts; of which white and black are the two extremes, and consequently comprehend within them all other colours whatsoever.

"By a bequest therefore, of black and white horses, grey or pied horses may well pass, for when two extremes, or remotest ends, of any thing are devised, the law by common intendment will intend whatsoever is contained between them to be devised so.

"But the present case is still stronger, coming not only within the intendment, but also the very letter of the words. By the word black, all the horses that are black are devised; by the word white, are devised those that are white, and by the same word, with the conjunction copulative, *and*, between them, the horses that are black and white, that is to say, pied, are devised also. Whatever is black and white is pied; *ergo*, black and white is pied, and, *vice versâ*, pied is black and white.

"If, therefore, black and white horses are devised, pied horses shall pass by such devise, but

black and white horses are devised; *ergo*, the pl. shall have the pied horses.

Pour le Defend.

"Catlyne Sergeant. Moy semble al contrary, the plaintiff shall not have the pied horses by intendment; for if by the devise of black and white horses, not only black and white horses, but horses of any colour between these two extremes may pass, then not only pied and grey horses, but also red or bay horses would pass likewise; which would be absurd, and against reason. And this is another strong argument in law, *Nihil, quod est contra rationem, est licitum;* for *nemo nascitur artifex,* and legal reason *est summa ratio;* and therefore if all the reason that is dispersed into so many different heads, were united into one, he could not make such a law as the law of England; because by many successions of ages it has been fixed and refixed by grave and learned men; so that the whole rule may be verified in it, *Neminem oportet esse legibus sapientiorem.*

"As therefore, pied horses do not come within the intendment of the bequest, so neither do they within the letter of the words.

"A pied horse is not a white horse, neither is a pied a black horse; how, then, can pied horses come under the words of black and white horses?

"Besides, where custom hath adapted a certain

determinate name to any one thing, in all devises, feofments, and grants, that certain name shall be made use of, and no uncertain circumlocutory descriptions shall be allowed, for certainty is the father of right, and the mother of justice.

"*Le rest del argument jeo ne pouvois oyer, car jeo fui disturb en mon place.*

"Le Court fuit longement en doubt de cest matter et apres grand deliberation eu, judgment fuit donne pour le pl. nisi causa. Motion in arrest of judgment. That the pied horses were mares; and thereupon an inspection was prayed: Et sur ceo le court advisare vult."

"A notorious rogue being brought to the Bar, and knowing his case to be desperate, instead of pleading, he took to himself the liberty of jesting, and thus said, 'I charge you in the King's name, to seize and take away that man (meaning the Judge) in the red gown, for I go in danger of my life, because of him.'" (*Bacon's Apothegms.*)

END OF VOL. I.

D. SIDNEY & Co. Printers,
Northumberland-street, Strand

STANFORD UNIVERSITY LIBRARIES
STANFORD AUXILIARY LIBRARY
STANFORD, CALIFORNIA 94305-6004
(415) 723-9201
All books may be recalled after 7 days

DATE DUE